



Department
for Business
Innovation & Skills

**BENEFICIAL OWNERSHIP
TRANSPARENCY**

Enhancing transparency of
beneficial ownership information
of foreign companies
undertaking certain economic
activities in the UK

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1. Foreword from Baroness Neville-Rolfe

1. In July last year, the Prime Minister spoke of the importance of addressing corruption and combatting illicit financial flows. The UK Government has legislated to ensure that, from June 2016, we will be the first G20 country to establish a publicly accessible central registry showing who really owns and controls UK companies. This will open up a new era of corporate transparency in Britain and will help us to tackle corruption, money laundering and terrorist financing.
2. But to tackle corruption even more effectively, the UK Government is considering ways to improve transparency in ownership and control of foreign companies that are active in certain ways in the UK.
3. Enhanced transparency and trust are good for business and good for growth. The Government wants the UK to be one of the most open countries in the world for good, clean investment.
4. As with UK companies, the overwhelming majority of foreign companies contribute productively to the UK economy, abide by the law and make a contribution to society. But there are exceptions and the Government wishes to make it easier to identify them.
5. This discussion paper is the first stage in that process. It outlines a range of proposals to enhance the transparency of beneficial ownership for foreign companies that purchase land or property in England and Wales, or participate in public contracting in England. Owing to devolved responsibilities for property, it will be for the relevant authorities in each administration to bring forward measures in this area outside England and Wales: Scottish authorities are already considering reform of property registration. The measures on procurement would only apply to England. The proposals are designed to help prevent the UK from being a safe haven for corrupt money from around the world.

2. Overview

Rationale for action

6. The World Bank has estimated that corruption adds up to 10% to business costs globally.¹ According to the OECD, corruption costs around 5% of global GDP every year. If this could be cut by just 5%, it would add as much to global GDP as was estimated for the Doha Development Trade Round.²
7. Crime organisations and corrupt individuals frequently use companies to hide the proceeds of bribery, corruption and organised crime. Organised crime costs the UK at least £24 billion each year.³ Criminals deliberately try and obscure the ultimate ownership of these companies to distance themselves from the assets they really control and ensure law enforcement agencies, regulators, legitimate businesses and the general public are unaware of the true role the companies they control are performing.
8. Lifting the veil of secrecy over who ultimately owns and controls companies can therefore expose wrongdoing and disrupt a key vehicle for illicit financial flows, including those derived from corruption. The 2015 UK National Risk Assessment of Money Laundering and Terrorist Financing found that billions of pounds of suspected proceeds of corruption are laundered through the UK each year.⁴ To tackle corruption more effectively, the UK Government is considering ways to improve transparency in ownership and control of foreign companies that are active in certain ways in the UK.
9. Enhanced transparency and the associated trust that goes with it is good for business and good for growth. The Government has already taken a series of steps to tackle tax evasion and tax avoidance to ensure that overseas investors pay their fair share and greater transparency will help to complement those steps and ensure that the UK continues to be a safe and secure place to invest. The UK has been at the forefront of international action and support for transparency of beneficial ownership information. With principles on the transparency of beneficial ownership agreed in the G8 and G20, along with the FATF recommendations, there is international consensus that increased transparency of beneficial ownership information is key to tackle the misuse of companies for laundering the proceeds of corruption and other crimes and for other purposes. The Government wants the UK to be one of the most open countries in the world for good, clean investment.
10. As with UK companies, the overwhelming majority of foreign companies contribute productively to the UK economy, abide by the law and make a contribution to society. The popularity of the UK for overseas investment is a reflection of our economic

¹ World Economic Forum, citing Gupta et al 2002

² 2013 OECD report, citing World Economic Forum

³ Serious and Organised Crime Strategy, HM Government, October 2013

⁴ UK National Risk Assessment of Money Laundering and Terrorist Financing, HM Government, October 2015

security and stability. But there are a small number of exceptions and the Government wishes to address that.

11. In this discussion paper we set out a number of ideas identified at the first stage in the process for making property ownership by foreign companies much more transparent and we look at the case for insisting that any company wishing to bid on a contract with the UK Government should explain who really owns it. The ideas explored below are a means by which we might identify, record and use information on the beneficial owners of foreign companies.
12. If, having considered the responses, the Government chooses to proceed with any of these ideas, it will move to a formal consultation with an Impact Assessment informed by the responses received to this discussion paper. The details of the ideas outlined below will need to be considered in light of the UK's obligations under the existing EU framework.

Why property and public procurement?

13. While foreign companies controlled by corrupt individuals and criminal organisations may be economically active in the UK in a number of different ways, there appear to be good reasons for approaching the problem through **two** specific activities, at least in the first instance. These are land/property ownership and public contracting.
14. **Property** can provide a convenient vehicle for hiding the proceeds of crime. A recent study found that a quarter of solicitors firms surveyed had experienced clients attempting to use property transactions to launder money or commit fraud.⁵ UK property is in any case attractive to overseas investors due to the UK's stable and open political and business climate. This also attracts criminal organisations and corrupt individuals who want a good investment and may also seek the badge of wealth and respectability that UK property ownership can bestow. The high values of property in London in particular, presents an opportunity for criminals to launder considerable sums of money in one transaction.
15. Between 2004-2014, over £180m worth of property in the UK has been investigated by UK law enforcement as suspected proceeds of corruption. Moreover, over 75% of these properties use offshore corporate ownership.⁶ This is believed to be the tip of the iceberg in terms of the scale of the proceeds of corruption invested in UK property through offshore companies.
16. **Public procurement** of goods and services in the UK amounted to £242bn in 2013/14, which accounted for 33% of public sector spending.⁷ Obtaining more complete beneficial ownership information on foreign companies could have a number of potential benefits including:

⁵ Conveyancing Thematic Study: Full Report, Solicitors Regulation Authority, March 2013.

⁶ http://issuu.com/transparencyyuk/docs/ti-uk_corruption_on_your_doorstep

⁷ Lorna Booth, 2015. Public procurement parliamentary briefing paper.

- ensuring that the Government receives the best value for money on behalf of tax payers,
 - ensuring that legitimate businesses participating in public contracting are treated fairly, and
 - preventing corrupt individuals and organised crime laundering the proceeds of their crime through public contracts.
17. The Government would also like to use its purchasing power to raise the global level of transparency around the ownership of internationally active companies.
18. Information on the beneficial ownership of UK companies including those participating in public contracting will shortly be available (see page 7), but without further action there is no guarantee that similar information on non-UK companies that wish to participate in public contracting will also be available.
19. In addition to making the beneficial ownership information of foreign companies conducting these activities in the UK available to public authorities and law enforcement, the Government is considering the extent to which it can be made available to the public. The Government may consider having an equivalence regime whereby foreign companies do not need to provide their beneficial ownership information to a public register in the UK where that information is already available on a register in their state of incorporation. In this instance, they would instead be required to provide their registration number for that register. In respect of EU companies, this analysis will be affected by the way in which Member States implement the requirements of the Fourth Money Laundering Directive, particularly the extent to which they choose to make their beneficial ownership registers available to the public. This is discussed in further detail in the next section of this paper.

Benefits to business

20. The Government believes there are important **benefits to UK businesses** from extending the requirement to provide beneficial ownership information to foreign companies active here. Requiring non-UK companies to provide their beneficial ownership information for public contracts could also make it easier for UK businesses to require the same information from foreign companies in private contracting processes if they choose to do so.

3. Property

Current legislative landscape

UK register of people with significant control

21. From April, UK incorporated companies will be required to keep their own register of people with significant control (PSC), which will contain information on the company's beneficial ownership and control. This information is in addition to existing disclosure requirements such as the requirement to register company directors. From 30 June, this new information will need to be supplied to Companies House, alongside the annual confirmation statement of a company's records. Companies House assigns a unique company registration number to registered companies, and that number can be used by third parties to look up the company's details including its PSC information. This means that by June 2017, Companies House will hold PSC information for most UK incorporated companies and it will be made available to all in a public register. The UK PSC register will include information on an individual's name, date of birth, nationality, address and details of their interest in the company.
22. There are five conditions which define a person (either an individual or entity) as having 'significant control' over the company: directly or indirectly holding more than 25% of the shares in the company; directly or indirectly holding over 25% of the voting rights in the company; directly or indirectly holding the right to appoint the majority of the board of directors; having the right to or actually exercising significant influence or control over the company; and exercising significant influence or control over a trust or firm that itself meets the control conditions, where that trust or firm is not a legal person.

The 4th Money Laundering Directive (4MLD)

23. In June 2015 the EU published the 4th Money Laundering Directive (4MLD), which requires Member States to ensure that entities incorporated in their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership. Member States are also required by 4MLD to ensure that this beneficial ownership information is held in a central register in that territory. This information is to be accessible to law enforcement agencies without restriction, and to obliged entities within the framework of customer due diligence and any person or organisation that can demonstrate a legitimate interest. EU Member States must implement 4MLD by no later than June 2017. 'Beneficial owner' is defined under 4MLD as any individual who ultimately owns or controls the corporate entity through direct or indirect ownership of over 25% of the shares or voting rights or ownership interest in that entity, or through control by other means.
24. The Government will consult later this year on the measures that it proposes to bring forward to meet the 4MLD requirements, including changes to PSC legislation where required.
25. At present it is unclear how the 4MLD will be implemented in other EU Member States. While some Member States may follow the UK in introducing public registries

of company beneficial ownership information, it is unlikely that all will do so. This will affect the analysis that the Government is undertaking as to the extent to which we can require the beneficial ownership information of EU companies involved in property ownership or public procurement in the UK to be made available on a public register and the details of any equivalence regime that is adopted in respect of those companies.

26. It is also not yet clear the extent to which information held on another Member State's beneficial ownership register will be accessible to third parties. The UK Financial Intelligence Unit (housed in the National Crime Agency) will be able to obtain the information held on another Member State's register. However, in terms of any person or organisation obtaining information, it is also not yet clear how different Member States will interpret the term "legitimate interest" and there is likely to be some variation in the information that entities are required to provide over and above the minimum requirements of 4MLD. Again this will affect the analysis as to what specific information the UK can require from EU companies in regards to their beneficial owner.

4. How should foreign company beneficial ownership information be held?

27. The new approach the Government is considering would be based on requiring foreign companies to provide information on their beneficial ownership **before** they are able to buy land/property in England or Wales or enter into public procurement contracts in England. The following chapters set out various ideas for implementing this basic approach.
28. The Government's starting assumption is that the obligations placed on foreign companies should be broadly similar to those being placed on UK companies.
29. The Government has already identified at least two areas of economic activity in relation to which this information could be collected – land/property ownership and public contracting - and there may be further areas identified in the future. However, the Government is not currently consulting on other areas at this stage.
30. There are a number of options on where this information could be held and managed. We are clear that wherever the information is held it will need to be:
 - Easily accessible to law enforcement and investigatory organisations;
 - Easy for foreign companies to provide the information, access their records and update;
 - Compatible with other registries that the information will be used for, for example the land registry;
 - Subjected to a level of quality assurance to the information being received; and
 - Operate on a cost recovery basis.
31. One option for holding the information would be to establish a further register managed by Companies House alongside the UK PSC Register. Alternatively, the new register could be operated by another independent public body, or by a private sector organisation. Under all these options, a foreign company on the register would be provided with a unique identifier number, which would enable it to purchase land or real property in England or Wales or help facilitate its participation in public contracting in England.
32. The Government would welcome views as to the proposals outlined in this discussion paper and intends to further develop these proposals this year. The details of the proposals outlined below will need to be considered in light of the UK's obligations under the existing EU framework.

Questions

Principle

Q1. UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?

Q2. Do you have any views on the options for holding information set out above?

Q3. Are there any additional considerations for where and how the information is stored that we should consider at this stage?

Q4. What information about their beneficial ownership should foreign companies be asked to provide?

Extent

Q5. Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?

Q6. Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?

Costs and benefits

Q7. What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into public contracts?

5. What enforcement mechanisms should be used?

33. Once the provisions of the PSC regime are fully in force, UK incorporated companies will be obliged to investigate and obtain information about their ownership, and keep this information up to date. They are obliged to keep this information on a register and allow access to/provide copies of their register. They will separately be required to provide this information to Companies House initially when they file their annual confirmation statement (formerly the annual return) and thereafter keep the information up to date, formally confirming that the information is correct every 12 months. The frequency of updating information with Companies House is one area that will be reviewed as part of the implementation of 4MLD.
34. Where a company deliberately fails to meet these obligations, even after being made aware of any error, the company and any of its officers who are in default may be prosecuted. The maximum criminal penalties are 2 years' imprisonment and a fine. There are also duties on people whose information should be entered on the register, to make their information known to the company.
35. UK companies have also been given powers to obtain beneficial ownership information from their owners. These powers include being able to freeze the interest that the person has in the company where that person fails to respond to a notice for information. The effect of this is that the person is prevented from selling the interest, receiving payments from it or from otherwise exercising their right to it until they comply with their legal obligations.
36. In relation to foreign companies, it is more difficult to enforce criminal penalties for failure to file information with UK authorities. Foreign companies are unlikely to have officers in the UK, and it is more difficult to obtain or to check their information. It may therefore be appropriate to have alternative or additional methods of enforcement under the new proposals to cover situations where foreign companies provide false beneficial information to the register, or fail to keep it up to date.
37. Possible additional civil and criminal sanctions could include imposing a daily fine, and/or sanctions linked to the specific activity that the company needs to register for (i.e. restrictions on the ability to charge or sell existing property; restrictions on the ability to purchase new property; or participating in public contracting), or sanctions linked to other specific economic activities the company is undertaking in the UK.

Questions

Q8. How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

Q9. What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:

- a) in the case of new foreign companies acquiring land or property in England and Wales; and**
- b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?**

6. Purchase of land or real property

38. The Land Registry of England and Wales records the legal owner of residential and commercial land and property in England and Wales, whether held by an individual or a company. With registered land, an owner is not recognised as the legal owner until Land Registry registers them as the proprietor of the land. For UK companies, Land Registry requires the company registration number that companies incorporated in the UK receive from Companies House before it can register a UK company as a legal owner of land in England and Wales. The company's registered number is recorded in the proprietorship entry on the Land Register immediately after its company name.
39. Where a non-UK company applies to be a legal owner of land in England and Wales, the Land Register currently shows the name of the company and its territory of incorporation. Land Registry may also ask the company for evidence that it is a legal entity and can be registered as such, for example constitutional documents, such as its memorandum and articles of association, but this information is not made public on the Land Register. All companies are also under an obligation to provide their beneficial ownership information to their legal representatives during a property or land purchase as part of the due diligence process.
40. The Government is concerned that the latter requirement provides insufficient transparency on beneficial ownership information. It can be circumvented by not using legal representatives and, even where information is provided, it is not made public. Moreover the degree to which the information provided is verified depends on the risk assessment applied by legal representatives involved in the transaction.
41. Once the UK PSC Register is up and running, the authorities and public will be able to quickly cross-reference the beneficial ownership and control of most UK companies with the land and property they own recorded by the Land Registry. The Government believes there is a strong case for ensuring similar transparency in the case of property owned by foreign companies. As a first step, the Land Registry is publishing a dataset containing the legal owner and addresses of all properties owned in the UK by foreign companies.
42. The Government is considering exempting foreign companies incorporated in jurisdictions which already have an accessible central register of beneficial ownership information (holding adequate, accurate and current information) from providing similar information to a UK foreign company beneficial ownership register. For example, it may also be appropriate to exempt all non-UK EU companies from providing similar information to the UK foreign company beneficial ownership register given the provisions of 4MLD discussed above. In both cases, we expect the Land Registry to request and record the unique identifier number from the foreign company's home register.
43. Where foreign companies have a branch in the UK, the branch has to be registered with Companies House, which issues a registered number for that branch. If such companies own land in England and Wales, the Land Register shows the UK-issued

branch registered number. The PSC regime will not apply to foreign companies with registered branches in the UK.

44. To cover existing properties owned by foreign companies in England and Wales under the new arrangements would mean asking each of the registered proprietors of up to 100,000 titles that are currently registered to foreign companies to obtain a unique identifier from the foreign companies beneficial ownership register and then provide it to the Land Registry within a reasonable time. Obtaining a unique identification number for this purpose would also incur a fee. Thereafter these foreign companies would be subject to the same requirements as overseas companies purchasing property in England and Wales for the first time.
45. Under this proposal a foreign company will only be able to register its ownership of land or property by providing the Land Registry with a unique identification number obtained from the foreign companies beneficial ownership register. The Government needs to consider how to apply sanctions to foreign companies who provide false information or fail to keep the initial information provided up to date. Provision of false PSC information by UK companies is a criminal offence. As discussed elsewhere in this document, there are challenges to UK authorities being able to effectively apply the same sanctions against foreign companies. The Government also needs to consider how to enforce a requirement to register beneficial ownership information against companies that already own property in England and Wales, if it is decided that the proposals will apply in those circumstances.
46. Possible civil and criminal sanctions against foreign companies in these circumstances could include:
 - Tracking the domestic PSC regime i.e. criminal sanctions imposed on the company, its officers and / or its persons of significant control;
 - Enhanced criminal sanctions e.g. statutory presumption that a charging order will be imposed on property if a company or individual is fined in relation to a foreign company beneficial ownership register; and / or a daily fine until the breach is remedied;
 - Suspending the unique identification number of the foreign company, preventing the company from selling or charging its property until the number is restored.

Devolved Administrations

47. The new Land Registry provisions would apply to England and Wales only.

7. Public procurement

48. The Government is considering the case for requiring any company wishing to bid on a contract with the UK Government to identify their beneficial owner or owners. Public authorities are accountable for the public money that they spend. Obtaining beneficial ownership information about all those companies bidding in a procurement process would improve the ability of public bodies to account for this money and to know how (and with whom) it is being spent. In addition, the Government considers that companies that bid for or are awarded public contracts should be transparent about who owns and controls them, just as contracting authorities are required to conduct transparent procurement processes when deciding how to award public contracts. Requiring transparency about the beneficial ownership of all bidder companies would therefore complement the steps contracting authorities are already required to take to ensure fair and transparent procurement processes when deciding how to award public contracts.
49. The current legal framework for public procurement is generally the Procurement Directive 2014/24/EU, which has been implemented by the UK into English law through the Public Contracts Regulations 2015 (PCRs). The procurement law rules are designed to:
- ensure fairness in how contracts are advertised and awarded, and
 - promote competition for procurement opportunities across Member States, and
 - open up the internal market to suppliers from Member States and countries that have entered into relevant international agreements with the EU.
50. The 2014 Directive and the PCRs incorporate the EU Treaty principles of equality of treatment, transparency, non-discrimination, mutual recognition and proportionality. Contracting authorities (public bodies carrying out procurements) must apply these principles when engaging with prospective and actual bidders, from the process of advertising through to awarding public contracts. Where contracting authorities ask questions of bidders, these must be relevant, asked consistently of all bidders and asked at the same point in the procurement process. Where a contracting authority imposes requirements, these must be applied consistently to all bidders and at the same stage in the procurement process.
51. The General Procurement Agreement (GPA) extends contracting authorities' obligations to apply the EU Treaty principles to suppliers from countries outside the EU that have signed the GPA, as well as giving these suppliers the right to be treated no less favourably by a contracting authority than how it treats suppliers from the EU, (including the UK). The GPA currently covers 17 signatories, including the US, Canada and China. This protection also extends to countries that have entered into other international agreements with the EU that provide protections on non-discrimination in procurement. These entitlements are set out in the 2014 Procurement Directive and in the PCRs.

Q10. Do you agree that knowing the beneficial ownership information of those companies participating in public contracting will help the contracting authorities operate a fair and straight forward approach towards the procurement?

Considerations

52. There are a number of important aspects relevant to public procurement that should be taken into consideration when looking at potential approaches to requiring beneficial ownership information.
53. Applying the requirements to all bidders means the Government will know the ultimate identity of all those with which it does business and allow it to ensure it treats bidders consistently and to ensure transparency and accountability principles are applied across its public contracts. This would be done using unique identifier numbers for accessible registries where available and appropriate, in order to provide a straightforward way for the contracting authority to ensure that all participants provide the same information.
54. The Procurement Directive sets out the grounds on which bidders may or must be excluded from a procurement process. These exclusion grounds are implemented in regulation 57 of the PCRs, and must be considered carefully. The grounds fall into two categories: mandatory and discretionary.
- **Mandatory grounds** include a bidder having been convicted of specified offences such as corruption, bribery or fraud. They extend to situations where the person convicted is a member of the administrative, management or supervisory board of the supplier, or has powers of representation, decision or control in them. This ground could therefore be relevant to the beneficial owner of a company if they have a conviction covered in regulation 57.
 - **Discretionary grounds** include evidence of having entered anti-competitive agreements (regulation 57(8)(d)), or where the bidder has been guilty of serious misrepresentation about information required to verify whether exclusion grounds exist under regulation 57, or has withheld that information (regulation 57(8)(h)). The discretionary ground relating to withholding information could be relevant if beneficial ownership information about the beneficial owner was needed to verify whether grounds for exclusion exist – for example that the beneficial owner has a conviction covered in regulation 57 or that there are plausible indications the bidder has entered into agreements with other bidders aimed at distorting competition.
55. There are a number of ways in which a contracting authority currently asks for information about bidders in order to decide whether to exclude them from a procurement process. At present, central government procurers are required to use a standard pre-qualification questionnaire (PQQ) for contracts above the applicable EU procurement threshold (currently £106,047 for supply and services contracts). Other contracting authorities, such as local government, are required under the PCRs to have due regard to any guidance issued by the Cabinet Office via the Crown Commercial Service (CCS) and CCS has strongly recommended that such bodies use the standard PQQ for applicable contracts.

56. Bidders are already required under the Government's standard PQQ to self-certify that they are not subject to the regulation 57 grounds for exclusion, including relevant criminal convictions, and are required to provide details of any "self-cleaning" measures. A bidder that is guilty of serious misrepresentation in supplying information required to verify that exclusion grounds do not apply to them or which has withheld this information, can be excluded from a procurement on a discretionary basis.
57. Bidders are already asked the question whether they or their beneficial owner have a relevant conviction, and the Procurement Directive provides that contracting authorities have to accept self-certification by bidders through the European Single Procurement Document (ESPD) and certificates, as evidence that the bidder/their owner does not have a relevant conviction.
58. Typically, Government adopts a value threshold of no lower than £10 million when implementing new procurement policy to ensure the burden on contracting authorities is minimised. This means this new policy is expected to apply to "major projects" in government procurement.

Q11. Do you agree this £10 million threshold would be appropriate for the ideas set out below?

59. The different options set out below could be implemented without amending existing legislation.⁸
60. Where a bidder is excluded from a contracting authority's procurement opportunities under regulation 57(8)(h)(ii) of the PCRs for withholding information required to verify there were no grounds for excluding it from a procurement, the exclusion will last for 3 years (subject to the bidder demonstrating acceptable self-cleaning).
61. It is not common practice for Government to apply new policy to existing contracts, given time and cost constraints. The Government is not recommending a new policy on provision of beneficial ownership information be applied to existing contracts. Options A to D (set out below) deal with the process before a contract has been awarded, and therefore would have no effect in a situation where a contract is already being performed. Applying the requirement to provide beneficial ownership information from a clear future date to contracts that have not yet been awarded will provide certainty for the contracting authority and contractor and will ensure that the contracting authority has appropriate options for dealing with failure to provide that information during the procurement process.
62. To underpin any new policy, a mechanism is required, where relevant, to keep up to date information that has been provided by bidder companies to contracting authorities. This can be achieved by including a termination clause in contracts to cover this situation and to cover where the information supplied that led to the

⁸ Implementation would be via a Procurement Policy Note, with which central government contracting authorities are expected to comply and other contracting authorities are strongly encouraged to comply.

contract award was inaccurate. Contracting authorities could include contract conditions that deal with two situations:

- **Where a bidder provides false or inaccurate beneficial ownership information** – the Government has standard terms and conditions that all contracting authorities can use and that central government would be required to use where appropriate. These include a warranty by the bidder that the information provided in its bid was accurate. It would be possible to draft a termination clause to include situations where the contracting authority later discovers the information about the unique identifier number or beneficial ownership information itself provided by the successful bidder was inaccurate or false.
- **Where a bidder does not keep its beneficial ownership information updated through the period of the contract** - This situation could again be addressed via a contract termination clause that is included in the Government standard terms and conditions.

Options for discussion

63. There are a number of ways that the Government has identified that could implement its aim for of knowing the ultimate owner of those it is doing business with. The Government has identified four possible options (and there may be more) to ensure the contracting authority obtains beneficial ownership information from bidder companies before awarding a public contract. The Government welcomes views on other ways to achieve this aim.

A. Link failure to provide beneficial ownership information to existing grounds for *exclusion* under the Public Contract Regulations (PCRs)

64. With this option, UK bidder companies would provide their company registration number, EU bidder companies would provide either details of the beneficial ownership register in their Member State (if the contracting authority could access it) or inform the contracting authority of their beneficial ownership details directly, and foreign bidder companies that are not EU companies would provide a foreign company beneficial ownership register unique identifier number.
65. Failure to provide this information would likely result in the bidder being excluded from the procurement process on the grounds set out in regulation 57(8)(h)(ii) of the PCRs, namely that the bidder had withheld information required to verify there were no grounds for excluding it from the procurement.
66. To rely on regulation 57(8)(h)(ii), a contracting authority would have to, on case by case basis:
- be satisfied that it needed the beneficial ownership information to verify that there were no grounds for excluding the bidder company under regulation 57 (for example criminal convictions by its beneficial owner, or plausible indications of it entering into anti-competitive agreements).

- be satisfied the beneficial ownership information provided by all bidders was genuine and carry out other checks (for example, criminal records checks), to establish if a bidder should be excluded under regulation 57;
- consider any evidence provided of self-cleaning.

67. It would be possible for an additional section to be incorporated within the procurement process requiring bidders to provide satisfactory information about their beneficial ownership either as part of the standard PQQ or at the same time that an ESPD might be used.

Q12. What are the potential benefits and burdens for contracting authorities and for bidders of the approach in option A? Would it provide a proportionate way to deliver the proposal taking into account the 3-year exclusion that would apply for not providing a beneficial ownership unique identifier number?

B. As with A, but giving all non-UK companies the option to provide beneficial ownership information directly to the contracting authority

68. This would allow all non-UK company bidders to be able to inform the contracting authority of their beneficial ownership details **directly**. UK companies would still be required to provide their company registration number to the contracting authority, since all UK companies will have in any case have to provide beneficial ownership information to a UK register. Contracting authorities would be required to show they needed the information to ascertain that grounds for exclusion under regulation 57 (relevant conviction, plausible indications of anti-competitive behaviour) do not apply to the bidder company. Companies excluded under Option B for failing to provide their beneficial ownership information would again be excluded for 3 years from that contracting authority's procurement opportunities.

Q13. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option B? Would the 3 year exclusion period be proportionate?

C. Treat failure to provide beneficial ownership information as making the bid *incomplete or non-compliant*

69. Before awarding contracts, contracting authorities are required under Regulation 56(1) of the PCR to verify that a tender complies with the requirements, conditions and criteria set out in the contract notice and the procurement documents; the contracting authority is entitled not to award the contract to a bidder that fails to comply with them in the procurement process. Where information or documentation to be supplied by bidders looks incomplete or erroneous, regulation 56(4) of the PCR allows a contracting authority to request the bidder to correct, clarify or provide what is missing, provided that these requests comply with equal treatment and transparency. In deciding this, the contracting authority must consider the potentially negative impact on other bidders who did comply with the stated requirements or might have been deterred from applying at all because of the requirement.

70. As with options A and B, under option C the contracting authority could require that beneficial ownership information be provided through provision of an accessible beneficial ownership registry number. Alternatively, in the case of non-UK companies (including EU ones), it could allow the option of providing beneficial ownership information directly to the contracting authority. If the contracting authority requires this information to be provided as part of a bid for the contract and states clearly in its procurement documentation that tenders not complying with this would be rejected, it should be able to reject a bid for a particular contract where the company failed to provide its beneficial ownership information. The rejection would only apply for that specific contract opportunity.

Q14. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option C?

71. Alternatively, a variation on this approach could be for the contracting authority to request beneficial ownership information from all bidders at an earlier stage, for example the PQQ stage. Under this approach, providing beneficial ownership information would continue to be a condition of the procurement process and failure to provide the information would mean the bidder company could not proceed in the procurement, but the decision would be taken at an earlier stage.

Q15. What are the potential benefits and burdens for contracting authorities and bidders of this variation of option C?

D. Make it a condition of the procurement process that to be awarded a contract; a bidder must provide beneficial ownership information

72. A contracting authority would set out in its procurement documentation that a condition of being awarded the contract would be for the bidder to provide their beneficial ownership information. Therefore the bidder that had been ranked highest scoring in the evaluation process would be asked by the contracting authority to provide its beneficial ownership information in order to be awarded the contract. The bidder's entitlement to proceed to contract award stage would depend on it providing the beneficial ownership information. Because the procurement documentation would set out this requirement clearly, all potential bidders would be aware that it would be required.

73. If the bidder ranked highest in the evaluation declined to provide this information, the contracting authority would ask the next highest ranked bidder company to provide its beneficial ownership information instead (and award that bidder the contract if it was provided, or approach the next highest ranked bidder after that, if not).

74. There would be no requirement on the contracting authority to check information about every bidder as the requirement would only apply after bids had been ranked, and would be applied to the highest ranked bidder. Foreign companies could participate in the procurement process without incurring the cost of registration or any delays involved in applying to register for the foreign company beneficial ownership register before being able to bid.

Q16. How does the approach in option D compare with options A-C in practical terms? What are the benefits and burdens of option D for contracting authorities and bidders?

Geographical application

75. Any policy resulting from this discussion paper and subsequent consultation process would apply only to contracts awarded in England.

Q17. What other issues should be taken into account when considering the options outlined about procurement in the discussion paper?

Q18. Are there other options potentially available to Government regarding procurement, which would achieve the same aims overall, that have not been set out here? If so, what are the associated likely practical constraints and benefits?

8. International benefits from the new approach

76. Corruption and financial crime more broadly, undermines sustainable development in many developing countries, reducing government revenues, distorting government investment decisions and weakening overall governance. The ability to transfer illicit funds overseas through opaque domestic or foreign company structures facilitates corruption and drains resources that would otherwise be available for development. Ownership of property in the UK and other advanced economies can be a convenient way to hide and launder the proceeds of corruption. Illicit funds may also be invested - and hidden - through UK public contracting.
77. International action is needed in order to make progress to tackle corruption in individual countries. There is growing international commitment and increasingly international mechanisms to facilitate this. The UN Convention against Corruption has provided a universal legal instrument for addressing international corruption and is supported by 178 state parties. The agreement of a new set of global Sustainable Development Goals in 2015 included a goal focused on strengthening governance, rule of law and institutions to support sustainable development and reduce corruption and bribery.
78. Helping to combat corruption in developing countries is a key priority for the Government. The approach set out in this discussion paper to tackle company misuse will contribute to the Government's efforts on this and has a number of potential benefits for other countries, particularly in the developing world. **First**, it will make available beneficial ownership information on foreign companies active in the UK which UK law enforcement authorities can use to tackle corruption overseas. **Second**, if and to the extent that this information is publicly available, it would enable overseas governments, civil society and businesses to use the information to expose corruption impacting on their countries. **Third**, foreign governments and businesses may be able to use the England and Wales / England foreign company beneficial ownership register to increase transparency around their own contracting processes by using unique identifiers from the UK registry from domestic and/or foreign companies. **Fourth**, the experience of England and Wales in implementing a foreign company beneficial ownership register should assist other advanced and developing countries in implementing a similar approach.

Questions

Q19. Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

Q20. What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

9. Consultation questions

Q1. UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?

Q2. Do you have any views on the options for holding information set out above?

Q3. Are there any additional considerations for where and how the information is stored that we should consider at this stage?

Q4. What information about their beneficial ownership should foreign companies be asked to provide?

Q5. Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?

Q6. Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?

Q7. What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into public contracts?

Q8. How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

Q9. What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:

- a) in the case of new foreign companies acquiring land or property in England and Wales; and
- b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?

Q10. Do you agree that knowing the beneficial ownership information of those companies participating in public contracting will help the contracting authorities operate a fair and straight forward approach towards the procurement?

Q11. Do you agree this £10million (procurement) threshold would be appropriate for the ideas set out below?

Q12. What are the potential benefits and burdens for contracting authorities and for bidders of the approach in option A (procurement)? Would it provide a proportionate way to deliver the proposal taking into account the 3-year exclusion that would apply for not providing a beneficial ownership unique identifier number?

Q13. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option B (procurement)? Would the 3 year exclusion period be proportionate?

Q14. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option C (procurement)?

Q15. What are the potential benefits and burdens for contracting authorities and bidders of the suggested variation of option C (procurement)?

Q16. How does the approach in option D (procurement) compare with options A-C in practical terms? What are the potential benefits and burdens of option D for contracting authorities and bidders?

Q17. What other issues should be taken into account when considering the options outlined about procurement in the discussion paper?

Q18. Are there other options potentially available to Government regarding procurement, which would achieve the same aims overall, that have not been set out here? If so, what are the associated likely practical constraints and benefits?

Q19. Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

Q20. What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

10. How to respond

79. The closing date for responses is **Monday 4 April 2016** (deadline extended from 1 April 2016).
80. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents.
81. We would welcome suggestions of others who may wish to be involved in this consultation process.
82. The response form is available on the GOV.UK page: www.gov.uk/government/consultations/property-ownership-and-public-contracting-by-foreign-companies-improving-transparency (until the period for providing formal views has closed). The response form or any alternative format you wish to provide in writing can be submitted by email or by letter to:

Transparency and Trust Team
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Email: transparencyandtrust@bis.gsi.gov.uk

83. Other versions of the document in Braille, other languages or audio versions are available on request.

11. Help with queries

84. Questions about the policy issues raised in the document can be addressed to:

Transparency and Trust Team
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

Email: transparencyandtrust@bis.gsi.gov.uk

12. Confidentiality and data protection

85. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). There is also a statutory Code of Practice issued under section 45 of the FOIA with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
86. If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

13. Consultation principles

87. The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

www.gov.uk/government/publications/consultation-principles-guidance

Comments or complaints on the conduct of this consultation

88. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET

Tel: 020 7215 1661

Email: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the Transparency and Trust Team as set out in [section 11](#).

Annex A: Beneficial Ownership Transparency response form

Submissions of evidence should be emailed to transparencyandtrust@bis.gsi.gov.uk clearly marked as a response to the 'Beneficial Ownership Transparency discussion paper'. Evidence will be reviewed thereafter. If further information or clarification is required, we will make contact as appropriate.

We are therefore inviting submissions and evidence by **Monday 4 April 2016** (deadline extended from 1 April 2016) to inform our consideration of proposals to enhance.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, where applicable, please make it clear who the organisation represents and how the views of members were assembled.

In exceptional circumstances we will accept submissions in hard copy. If you need to submit a hard copy, please provide two copies to the following address:

Transparency and Trust Team
Department for Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET

We regret that we are not able to receive faxed documents.

	Respondent type
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

Principle

Question 1 (Page 10)

1. **UK companies will have to provide beneficial ownership information under domestic legislation or declare that there are no people with significant control. Do you agree that foreign companies who want to buy land or property in England and Wales should be under a similar obligation?**

Yes No Not sure

Comments:

Question 2 (Page 10)

2. Do you have any views on the options for holding information set out above?

Comments:

Question 3 (Page 10)

3. Are there any additional considerations for where and how the information is stored that we should consider at this stage?

Comments:

Question 4 (Page 10)

4. What information about their beneficial ownership should foreign companies be asked to provide?

Comments:

Extent

Question 5 (Page 10)

5. **Should the requirement to provide beneficial ownership information be applied to foreign companies that already own property or land in England and Wales?**

Yes No Not sure

Comments:

Question 6 (Page 10)

6. **Should the Government work with Devolved Administrations to ensure a single approach across the whole of the UK?**

Yes No Not sure

Comments:

Costs and benefits

Question 7 (Page 10)

7. **What are the costs and benefits to business, the economy and society of transparency of the beneficial ownership of foreign companies that own land/property or wish to enter into the public contracts?**

Comments:

What enforcement mechanisms should be used? ([Section 5](#))

Question 8 (Page 12)

8. How should any new requirements to provide beneficial ownership information of foreign companies purchasing property in the UK be enforced?

Comments:

Question 9 (Page 12)

9. What type of sanctions do you think would be proportionate, effective and dissuasive to ensure beneficial ownership information is obtained:
- a) in the case of new foreign companies acquiring land or property in England and Wales; and
 - b) in the case of existing foreign companies owning land or property in England and Wales (if the obligation to provide beneficial ownership information is extended to them)?

Comments:

Public procurement ([Section 7](#))

Questions 10 (Page 16)

10. Do you agree that knowing the beneficial ownership information of those companies participating in public contracting will help the contracting authorities operate a fair and straight forward approach towards the procurement?

Yes No Not sure

Comments:

Question 11 (Page 17)

11. Do you agree this £10million (procurement) threshold would be appropriate for the ideas set out below?

Yes No Not sure

Comments:

Question 12 (Page 19)

12. What are the potential benefits and burdens for contracting authorities and for bidders of this approach in option A (procurement)? Would it provide a proportionate way to deliver the proposal taking into account the 3-year exclusion that would apply for not providing a beneficial ownership unique identifier number?

Comments:

Question 13 (Page 19)

13. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option B (procurement)? Would the 3 year exclusion period be proportionate?

Comments:

Questions 14 (Page 20)

14. What are the potential benefits and burdens for contracting authorities and bidders of the approach in option C (procurement)?

Comments:

Questions 15 (Page 20)

15. What are the potential benefits and burdens for contracting authorities and bidders of this variation of option C (procurement)?

Comments:

Questions 16 (Page 21)

16. How does the approach in option D compare with options A-C in practical terms? What are the potential benefits and burdens of option D for contracting authorities and bidders?

Comments:

Questions 17 (Page 21)

17. What other issues should be taken into account when considering the options outlined about procurement in the discussion paper?

Comments:

Questions 18 (Page 21)

18. Are there other options potentially available to Government regarding procurement, which would achieve the same aims overall, that have not been set out here? If so, what are the associated likely practical constraints and benefits?

Comments:

International benefits from the new approach ([Section 8](#))

Questions 19 (Page 22)

19. Would the approach proposed in this paper help developing countries combat corruption in the manner described above?

Yes No Not sure

Comments:

Questions 20 (Page 22)

20. What would be required from foreign governments in terms of access to local company and personal records in order for the England and Wales register to operate in support of developing countries?

Comments:

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for your views on this discussion paper. Please be aware that we intend to publish the responses.

Information provided in response to this discussion paper, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes. Please see [section 12](#) for further information.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses.

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No



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London SW1H 0ET
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