Company Law Reform Bill

REGULATORY IMPACT ASSESSMENT

November 2005

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1. Title of proposal

Company Law Reform Bill

2. Purpose and intended effect

Objectives

The Company Law Reform Bill seeks to ensure that British business operates within a legal and regulatory framework that promotes enterprise, growth, investment and employment. In order to deliver this, the Bill has four key objectives:

- To enhance shareholder engagement and a long-term investment culture
- To ensure better regulation and a "Think Small First" approach
- To make it easier to set up and run a company
- To provide flexibility for the future

Background

Britain was one of the first nations to establish rules for the operation of companies. Today our system of company law and corporate governance sets out the basis on which companies are formed, operated and managed. It provides the corporate vehicle that enables individuals to collaborate in business, and the legal structure through which companies are financed. It sets the rules for company boards and shareholders and for the exercise of decisions on business growth and investment.

Rationale for government intervention

Over time company law can become outdated and there is a real risk that the gradual divorce of the legal framework from the needs of business today – in particular the needs of smaller private businesses – will become an obstacle to ways that companies want and need to operate in an evolving business environment.

Unless a reform programme addresses the separation of business need and legal framework, a number of unwelcome effects are likely to have an increasing negative

impact on business in Britain. For example, entrepreneurship could be stifled as start-up companies find themselves weighed down by regulation and denied access to capital. In an increasingly globalised economy where companies have more freedom to choose their place of incorporation it is especially important to ensure that the UK does not lose out as a location for business.

3. Consultation

The policy development process leading to the measures in this Bill has been extensively participatory, and has involved several formal consultation stages, as well as continuing informal consultation with key stakeholders.

In March 1998, the DTI launched a long-term fundamental review of company law. An independent Steering Group led the Company Law Review (CLR); its aim was to develop a simple, efficient and cost effective framework for British business in the twenty-first century. The CLR presented its Final Report to the Secretary of State on 26 July 2001.

The Government published its response to the CLR's major recommendations in the White Paper “Modernising Company Law” (Cm 5553) published on 16 July 2002. A breakdown of the responses received, ordered by reference to chapters of the White Paper and the questions it posed, is available at: www.dti.gov.uk/cld/modern/index.htm

The final phase of stakeholder consultation began in March 2005 with the publication of the White Paper “Company Law Reform.” This set out the policy intention for the Bill and included 300 draft clauses. The website for this consultation is at: http://www.dti.gov.uk/cld/facts/clr.htm Additional draft clauses have also been published on this web site in July 2005 and September 2005.

Both White Papers, and some other formal consultation documents, have included RIAs, and responses to these RIAs inform the current assessment. In addition, the Department sent questionnaires setting out the policy intention of the most significant proposals to sample public and private companies, both large and small. Focus groups, and other forms of informal consultation were also held with representatives of small companies. Consultation on likely costs and benefits was held with these organisations and with other business representative bodies, and with individual companies from their memberships who volunteered to discuss the issues with DTI representatives.

4. Options

The proposed Bill is explicitly a *reform* Bill designed to simplify and improve an existing framework of legislation. Of necessity, therefore, the analysis of options is essentially concerned with the questions:

- which provisions of the existing law require reform; and
- if reform is required what form should it take?

The fundamental analysis of these questions was undertaken by the CLR itself in its series of reports on individual areas of the law. The objective of the CLR was the formulation of modern law supporting a competitive economy in a coherent and accessible form. As a strategic ideal the legislative framework should balance the maximum possible freedom with the transparency necessary to ensure the responsible and accountable use of that freedom so that, for example, people can deal with and invest in companies with confidence. During their analysis of company law the CLR took account of the evolving business environment, particularly globalisation – the impact of the EU's company law harmonisation programme, modern patterns of regulation and ownership, changing asset structures and the importance of small and closely held businesses. As an underlying principle the CLR adopted the following presumptions:

- against interventionist legislation and in favour of facilitating markets, including provision for transparency of information, wherever possible;
- in favour of minimising complexity and maximising accessibility of the rules – complexity should only arise where the substance demands it and the law should be structured on "think small first" principles;
- in favour of allocating jurisdiction to the most suitable regulatory bodies, avoiding duplication and conflict.

The CLR set out their key recommendations in "Modern Company Law For a Competitive Economy: Final Report" (July 2001). The Government's approach in taking forward these recommendations was set out in the White Papers "Modernising Company Law" (2002) and "Company Law Reform" (2005). This RIA does not attempt to set out again those alternative options that have been considered and rejected in the past. However, the Annex presents a summary of the key provisions contained in the Bill and supporting analysis and argument.

5. Costs and benefits

It is important to stress at the outset that there is relatively little in the way of a research base of hard financial information on the costs to business of compliance with existing company law requirements. This situation is not unique to the UK. In 2002 the United States enacted the Sarbanes-Oxley statute in response to the scandals at Enron, WorldCom and other companies. Describing the problems associated with estimating the regulatory impact of this statute Donald Nicolaisen, chief accountant of the US Securities and Exchange Commission (SEC) told an audience in October 2004:

"I suspect that the costs are not easy to estimate, but I know that it is even tougher to quantify the benefits."

Michael Oxley, co-sponsor of the law, put it more succinctly when describing the dynamic benefits associated with changes to regulatory requirements:

"How can you measure the value of knowing that company books are sounder than they were before?"

The quantifications put forward in this RIA rely heavily on information provided by consultees, which is often anecdotal or imprecise. The table in the Annex presents estimated ranges for the costs and benefits associated with the main provisions of the Bill.

Benefits

Company law is largely facilitative. There is no natural company; instead a company is the product of the nexus of regulation known as company law. Despite its facilitative character, there are elements of the regulatory framework that have become outdated and now serve no useful purpose. These regulations can act as obstacles to effective economic performance and create compliance costs that are not justified by any benefit that they might confer. This is a particular problem with company law as the legislative framework has developed over a long period of time.

To the extent that company law can be remodelled to fit today's needs better, this will act as a reduction in unnecessary regulation and will, by stripping out unnecessary elements of the compliance regime, yield direct cost-savings for companies.

Estimating these direct savings is very difficult. It is relatively easy to establish that a particular regulatory requirement is essentially redundant and should be amended or removed, but more difficult to establish what the monetised impact of this action will be. The table in Annex A presents estimates, based wherever possible on input from stakeholders, which indicate that the total direct benefits of the company law reform measures could be of the region of £160 million to £340 million per year.

In addition to the direct benefits described above, company law reform has the potential to improve performance across the economy as a whole, in particular by reducing the potential for conflicts of interest to develop between directors and shareholders. Mitigating this type of conflict helps to reduce the costs associated with the contractual arrangement between investors and companies (agency costs). Economic theory predicts that lowering agency costs may lead to a reduction in the cost of capital. Although this type of benefit is well grounded in economic theory, it is not possible to monetise it.

Costs

Direct Costs

Against savings of between £160m and £340m per annum there are only a handful of areas where the Bill will introduce new or stricter regulatory requirements, of a sort that might in principle increase compliance costs. These are generally confined to public/quoted companies, and are detailed in the table in Annex A. These costs are estimated to amount in total to between £2 million and £11 million per year.

Implementation Costs

The changes in the law have been designed so that, with very few exceptions, existing companies will not be *required* to do anything at the point when the new law comes into force or at any particular point thereafter. Companies will only need to act if they wish to take advantage of the benefits of a new reform. For example, if the company wishes to adopt e-communications with its shareholders as the default, it will need shareholder approval to amend its company's constitution. It will not be obliged to do so if it wishes to continue on its current basis.

Familiarisation Costs

In addition to the direct costs associated with the proposed company law legislation there will also be familiarisation costs associated with the new legal requirement. These costs are not expected to be significant. Companies rarely consult the law directly and instead look to advisers, for example lawyers and accountants, for guidance. Professional advisers will need to become familiar with the new law, but these professions have established programmes of continuous professional development that will in due course cover the changes to company law. Although the cost of all professional training is ultimately passed on to clients, we do not expect to see an increase in fees charged to companies as a result of the proposed legislative changes.

Summary Table

The following table sets out those provisions that will have the biggest impact in terms of costs or benefits. Additional detail is presented in the Annex.

Provision	Cost (per annum)	Benefit (per annum)
Access to timely, transparent company information	£0.4m – £4m	Difficult to quantify corporate governance benefits
Facilitating e-communications	Small administrative cost	Approximately £47m for FTSE companies, further cost-savings for rest of market
Exercising rights through proxy	£1m – £2.5m	Difficult to quantify corporate governance benefits
Codification of Directors' duties	No obvious costs	£30m – £105m
Register of members	No obvious costs	£2m
Shareholder right to question auditors	£0.3m – £2.5m	Difficult to monetise
Implementation of the Takeovers Directive	£1m – £1.5m	Difficult to monetise
Improving accessibility	Small costs	Approximately £30m
Resolutions and meetings	No obvious costs	£25m – £112m
Company Secretaries	Negligible	£3m – £6m
Capital maintenance and share provisions	No obvious costs	Approximately £20m
Simplification of company formation process	Not possible to monetise costs	£3m – £5m
Trading disclosures	No obvious costs	£4m – £12m
Total	**~ of the order £3m– £11m**	**~ of the order £165m – £340m**

6. Small Firms Impact Test

The "Think Small First" approach lies at the heart of the proposals for Company Law Reform, and the measures in the Bill have to a large extent been designed with small (private) businesses in mind. The vast majority of British businesses are small and medium sized enterprises (SMEs), and the impact of dated, inappropriate, or excessively complex regulation can be disproportionate on firms that, for example, do not have much in-house resource or expertise available to deal with compliance issues. The modernisations to Company Law proposed in the Bill should be of significant benefit to SMEs. Such modernisations will remove substantive unnecessary regulation and make the law more accessible and comprehensible. The proposals in the Bill have been discussed in detail with smaller firm bodies and their members, and reflect their suggestions for improvements to the current regime.

7. Competition assessment

Analysis indicates that the proposed Bill will not adversely affect competition between new and existing companies, or between companies of different sizes. Consultation supports this conclusion.

The impact of the proposed Bill on competition between businesses has been considered. The Bill as currently drafted will affect all companies and it should result in some savings for all companies, though proportionately more for smaller companies. In respect of one or two specific measures, larger (quoted) companies will face additional costs. However, these costs and benefits do not appear to be sufficiently large to affect competition

between companies of different sizes. The Bill will not impose different costs on new and existing companies.

8. Enforcement, sanctions and monitoring

The proposed reforms will provide greater clarity to questions as to who is liable for a particular breach in a particular set of circumstances. It is expected that the new regime will lead to greater understanding by participants of the requirements they are under and, potentially, to better levels of compliance. However, the reforms are not expected to lead to changes in enforcement patterns, and overall prosecution levels are unlikely to be significantly affected. Enforcement will, as now, rely on a variety of means depending on the nature of the breach (for example, Companies House will be responsible for enforcing penalties for late filing of accounts and similar offences).

9. Implementation and delivery plan

The Bill has been designed to be as facilitative as possible. For example new provisions concerned with how companies take decisions (Resolutions and Meetings) which yield some of the largest deregulatory benefits are essentially permissive in character, and after commencement individual companies will be able to take advantage of the new provisions on a case-by-case basis in the manner best suited to their specific needs.

Objective and Success Criteria

The Government's main objective in its method of implementing the measures in the Bill will be to ensure that businesses are fully sighted on the deregulatory opportunities made available by the Bill so that they can make informed choices on how they best wish to operate and can take advantage of them. The main success criterion will be the extent to which feedback from business confirms that the new law is simpler and more flexible in its effect. This focus on stakeholder feedback as the key measure of success in part reflects the difficulty of making concrete monetised assessments of the impact of company law measures, as discussed above, but also the fact that company law is essentially facilitative and the intention behind the measures is often to give companies flexibility and choice, rather than to ensure that they necessarily operate in any one particular way. Feedback from stakeholders will be gathered both as part of the post-implementation review, and also more anecdotally as part of the continued close working relationship between business and other stakeholders and the department.

Consultation and Compliance

It is important to recognise that there is generally speaking no “companies’ police” for ensuring compliance with the requirements of company law. The registrar (Companies House) and DTI prosecutors have limited remits associated with some of the non-permissive provisions in the Bill (for example provisions associated with the register of members and the preparation and filing of accounts). Notwithstanding some specific measures, the Bill will on balance be reducing rather than adding to the number of strict requirements in the company law regime, and no particular compliance difficulties are anticipated.

Resource Requirements

There will be some public sector costs associated with the enhanced provision of guidance material. While these will generally grow out of the existing activity of Companies House, the scale and number of changes in the Bill means some addition to Companies House existing communication programme will be needed. This will lead to some additional costs within Companies House in particular.

There will also be some set-up and implementation costs for Companies House in respect of certain measures in the Bill, such as facilitating electronic filing. As a minimum there will be some one-off costs of training and familiarisation for staff, as well as systems costs in some areas. It is likely that these costs will be passed on to businesses in the form of increased transactions costs. However, such increases should be more than compensated for by the cost-savings to business of the new arrangements.

Communications

Simpler law and better guidance will reduce agency costs. SME representatives have argued persuasively that simpler law, which “fits small business reality” better, will greatly increase business confidence in the overall regulatory environment and increase compliance. Companies House already provides extensive and well respected plain English guidance both in booklet form and increasingly through their website. We intend to increase the coverage of this guidance. It will in future include aspects of company law that go beyond a company’s responsibilities in relation to Companies House. For example, there will be clear new guidance on the important area of directors’ duties.

Disproportionate Impact

As stated in the competition assessment (Section 7 above) analysis indicates that the proposed Bill will not adversely affect competition between new and existing companies, or between companies of different sizes. Consultation supports this conclusion.

Commencement and Implementation Period

The timing of implementation of the Bill measures is not yet decided, and final decisions are subject to Parliament and the passage of the Bill. The Government will want to listen carefully to the views of business and other stakeholders. For example, in most respects the Bill will be introducing deregulatory or other changes which will save businesses time, money or effort, and there is generally an appetite for implementation (i.e. coming into force of the Bill and related regulations) as soon as practicable. Against this, the volume and scale of the changes in the Bill is considerable, and some businesses and their advisors may wish to see an appropriate lead-in time before the measures come into force to ensure that they can become as familiar as possible with the measures after they have been agreed by Parliament. It is likely that different measures in the Bill will to some extent be implemented at different times, for example to ensure that external EU deadlines are met. The Government is of course committed to the principle of common commencement dates in respect for new companies legislation.

10. Post-implementation review

Any monitoring and evaluation exercise needs to take account of both the regulatory cost savings expected to emerge from adoption of the proposals, as well as the longer term, more intangible benefits to shareholder engagement, promotion of a long-term investment culture, ease of setting up and running a company, and providing flexibility for the future. However, we also need to ensure that familiarisation and related implementation costs are, indeed, as low as we expect them to be. With regard to the short-term impact it will be necessary to make use of the many, varied stakeholders who have contributed to the Bill's development. Their contributions have been vital in ensuring that the proposals reflect a wide diversity of views. We can make use of these contacts to monitor implementation progress and to evaluate the longer-term benefits of the proposals.

In addition we are developing the methodology to establish a comprehensive stakeholder survey which will enable us to determine the impact of both the Bill, as well as other corporate governance measures, across a wide range of market participants including companies and investors. The ongoing nature of this survey will enable us to monitor the extent to which longer term behavioural changes occur which, we believe, will result in enhanced shareholder engagement and a long-term investment culture. The adoption of such a survey will also enable us to assess, in a timelier manner, when there is a need to introduce further improvements to the legislation to take account of changing company dynamics.

11. Summary

The Government believes that the provisions set out in this RIA will improve the performance of companies across the economy as a whole, and reduce direct compliance costs for business. Although the majority of provisions are evolutionary rather than revolutionary in nature, taken together they represent a huge step forward in ensuring that company law is up to date, flexible and accessible for all who use it. Overall, improvements will translate to a total cost saving of approximately £250m per annum.

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Alun Michael

1 November 2005

Minister for State of State for Industry and the Regions

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Annex: Summary Costs and Benefits by Objective

Objective 1: Enhancing Shareholder Engagement and a Long-Term Investment Culture

Policy Area	Policy	Measures	Costs	Benefits	Notes
Improving shareholder dialogue Shareholders have a key role to play in driving long-term company performance and economic prosperity. Informed, engaged shareholders - or those acting on their behalf - are the means by which the directors are held to account for business strategy and performance and by which investment decisions are taken that reflect the most efficient allocation of capital. However the investment chain has become increasingly complex, with the result that communication up and down the chain and the exercise of ownership rights and responsibilities have become more difficult. On the other hand, rapid growth in the use of new information and communications technologies over recent years presents great opportunities to reduce costs and enhance the immediacy and transparency of dialogue between companies and shareholders.	**Access to timely, transparent company** It is important that shareholders have access to clear and meaningful information to enable them to have a constructive dialogue and increase their engagement with the company in which they hold shares. The Bill will introduce a number of measures to enhance the timeliness and transparency of company information and proceedings.	For all public companies: Link AGM to reporting cycle For quoted companies: Disclose preliminary annual results, full accounts and reports on website Disclosure of poll results on website Right for shareholders to propose a resolution for AGM at companies' expense	Costs of the majority of measures are likely to be relatively small. Disclosure of company information on website should result in very little additional cost to business. Incremental cost of circulating shareholder resolution is negligible if company combines with circulation of AGM papers.	**Difficult to quantify monetary benefits** but likely to yield benefits associated with improving corporate governance**.** Good corporate governance is more likely to occur when the interests of shareholders and agents are aligned. In theory, therefore, these measures will improve corporate governance, reduce investment risk and perhaps lower the cost of capital. Rating agencies are currently developing models to allow governance quality to be reflected in bond ratings.	These measures address the problems associated with asymmetric information between companies and shareholders. Costs are generally associated with administrative overhead and are likely to be small.
	Right to demand independent report on polled vote This CLR recommendation goes to the heart of improving confidence in the integrity of the voting process in UK companies. If investors lose confidence in the voting process, they lose confidence in the markets.	The Bill will give members holding at least 5% of the vote or 100 members each holding on average £100 of paid up capital the right to demand an independent report on a polled vote. The independent report will be required to be disclosed on website.	Difficult to estimate costs associated with independent poll report, but **an indicative range is £0.35m - £4.2m per annum**. This estimate is based upon one or two independently assessed polls for between 50% and 100% of quoted company AGMs [1400] at a cost of £500 to £3000.	**Difficult to quantify monetary benefits** but likely to yield benefits associated with improving corporate governance	The CLR recognised that their proposals would not fully address all failures in the voting chain, but would deal with what is perceived to be a problem in registering voting instructions.
	Facilitating e-communications The policy intention is to remove existing company law requirements for the use of paper communications. For example, companies should be allowed to make their full annual report and accounts or a summary version accessible to shareholders via electronic means unless individual shareholders request a paper copy.	This measure allows companies (subject to shareholder approval) to be able to use electronic communications with shareholders as the default position; i.e. this measure will permit (but not require) companies to use websites and e-mail to communicate with their registered members.	**Small administrative costs** associated with the amendment of company articles and in building up e-communications databases.	Enhances the timeliness of company communications with stakeholders leading to reduced informational asymmetry etc Significant cost savings related to the elimination of paper communications. Initial estimates suggest that the net monetised **benefit of this measure might be in the region of £47m per annum for FTSE-listed companies alone.** However, since large companies can incur costs in the range £100k - £400k per mailing the above range is likely to be an	It is noted that some of the benefits to companies will of course be borne as costs by the printing industry.

Policy Area	Policy	Measures	Costs	Benefits	Notes
				underestimate. There will also be considerable cost-savings to non-quoted public and private companies. Cost savings may be reduced where individual shareholders exercise the right to request information in hard copy. Informal soundings with stakeholders indicate that take-up for hard copy information is likely to be in the region of 0.3% – 5%.	
Enfranchising indirect investors When investors - whether major institutional investors or retail investors - buy shares in a listed company, they are increasingly likely to hold their shares through an intermediary or a chain of intermediaries. The use of intermediaries makes electronic trading of shares easier and cheaper, but it can also be a regulatory requirement for example in relation to shares held as part of ISAs. However, as it is the intermediary's name that appears on the company's register of members, indirect investors risk losing their governance rights. There is no automatic basis in company law for a direct relationship between a company and these indirect investors. Instead the indirect investors may have to rely on contractual arrangements with the intermediaries to pass on at least some basic information and dividends from the company and to act on their instructions.	**Exercising rights through proxy** The policy intention is to enhance the rights of proxies so that indirect investors acting as proxies to the registered shareholder can exercise all the meeting participation rights which would otherwise rest with the registered shareholder alone.	This measure will ensure that the registered shareholder can nominate a proxy or proxies, who can, on their behalf, attend and speak at meetings, demand a poll, and vote on a show of hands or on a poll.	Most impact likely to be on large companies with diverse shareholdings. **Costs may be of the order of £1.05m - £2.45m per annum** (assuming 30 – 70 members in each of the 1400 quoted companies appoint additional proxies at an AGM with a cost to the company of £15 - £25 per time).	**Difficult to estimate** but likely to yield benefits associated with improving corporate governance.	This measure implements a key CLR recommendation.
	Exercise of governance rights The policy intention is to make it easier for indirect investors to exercise governance rights. Some companies already make their own provisions through their articles to recognise and enfranchise their indirect investors. But the present best practice can involve considerable detailed bespoke legal advice and drafting to set out complex provisions in a company's articles. This is expensive and time consuming.	This measure will allow a company to make provisions in its articles to enfranchise indirect investors. To the extent provided in the company articles, reference to registered members and their rights in primary legislation will be extended to include those identified by the registered member. The end result will be greater parity of treatment in law for registered members and indirect investors for the exercise of governance rights as specified in the company's articles.	**No costs** unless a company chooses to amend their articles to enfranchise indirect investors, in which case small administrative costs associated with amending company articles. If a company chooses to enfranchise indirect investors then provisions in articles will apply equally to registered members and those identified by the registered member. This should eliminate the need (and cost) of detailed bespoke legal advice and article drafting.	Some elements of the new scheme are designed to make it easier for companies to enfranchise their indirect investors without the need for (as at present) complex (and expensive) legal arrangements. **There is no evidence base to estimate how many companies will adopt a change in their articles.**	
At present the intermediary, as the registered member, is only entitled to one set of information	**Right to information** The measures above to	The Bill contains a right of information power which will allow for the Secretary of State	**No cost** unless the power is exercised.	Electronic delivery avoids most of the cost associated with paper mailing and it is much	This is a reserve power and it is anticipated that it will be exercised only if the market

Policy Area	Policy	Measures	Costs	Benefits	Notes
and, if this is all it receives, it cannot currently pass this on to all the indirect investors. Some companies are happy to provide more copies, but others have been reluctant because of the cost involved. Some intermediaries also have not wanted to incur the costs involved in mailing the information out to the indirect investors. The Bill will therefore enhance the ability of indirect investors - those not holding legal title to the shares of the company in which they invest - to play a fuller role in company proceedings.	enhance the use of e-communications and the exercise of proxy and governance rights are intended to encourage companies to enfranchise indirect investors. However, if the market fails to develop appropriate solutions to ensure that indirect investors have access to information they need to exercise governance rights, the government will take a power to legislate.	to compel some or all companies to provide information electronically to persons having an interest in shares if the registered member requests. The power may be exercised to compel companies to provide information in hard copy if the Secretary of State is persuaded that the benefits outweigh the costs.	**Negligible cost** if the power is exercised to compel the provision of information electronically only. Electronic delivery avoids most of the cost associated with paper mailing, although there is a small administrative cost involved for maintaining each additional name on an electronic database. **More significant costs** if the power is exercised to compel the provision of information in hard copy too where individuals request. The Secretary of State will need to be persuaded of the cost/benefits of exercising the power to this extent.	quicker and more practical (especially when forwarded through a chain of intermediaries).	does not develop appropriate solutions to ensure that indirect investors have access to information they require to engage in the governance of the companies in which they invest.
Directors As a company is an artificial legal entity it cannot exercise its powers in person but must act through the medium of its agents - the directors. The Bill includes a substantial number of provisions relating to directors. In particular it includes: a statutory statement of directors' general duties; provisions designed to deal with situations in which a director has a conflict of interest; provisions relating to the liability of directors; provisions relating to the appointment and removal of directors.	**Statutory statement of Directors' duties** The general duties which directors owe to the company are at the moment found in case law - i.e. decisions in individual court cases over the years - rather than in the Companies Act. As a result, the law in this area is not widely understood. The Government has accepted the recommendation of the CLR and Law Commissions that there should be a statutory statement of directors' general duties to provide greater clarity and make the law more accessible. This will for the most part be a codification, but it will also correct a defect in the current law in relation to the duties of conflicted directors.	The statutory statement of duties will replace existing common law and equitable rules relating to the conduct of directors. The duties will be owed to the company, and - as now - only the company will be able to enforce them. (In certain circumstances, the shareholders may be able to bring a derivative claim-to enforce the company's rights). The statutory statement will encourage the take-up of new business opportunities by permitting board authorisation of the exploitation of corporate opportunities by directors, provided that authorisation is given by unconflicted directors.	The statutory duties will, for the most part, codify the current law, but they will be more accessibly set out. There should therefore be **no costs** associated with the change	Using data from the 2002 White Paper "Modernising Company Law", the benefits accruing from greater clarity could be of the order of **£30m - £105m per year** (assuming 8% – 12% of 1,245,000 private companies (99,600 – 149,400) no longer need to take advice on this issue that costs £300 – £700 per year per company) The change of the law on conflicts of interest is likely to bring additional, though unquantifiable, economic benefits, by making it easier for a director to exploit business opportunities that the company is unable or unwilling to exploit itself.	The statement of duties will be drafted in a way that reflects modern business needs and wider expectations of responsible business behaviour. The CLR proposed that the basic goal for directors should be the success of the company for the benefit of its members as a whole; but that, to reach this goal, directors would need to take a properly balanced view of the implications of decisions over time and foster effective relationships with employees, customers and suppliers, and in the community more widely. The Government strongly agrees that this approach, which the CLR called "enlightened shareholder value", is most likely to drive long-term company performance and maximise overall competitiveness and wealth and welfare for all. It will therefore be reflected in the statement of directors' duties, and is also reflected in the new reporting arrangements for quoted

Policy Area	Policy	Measures	Costs	Benefits	Notes
					companies under the Operating and Financial Review Regulations.
	Regulating directors' conflicts of interest Part 10 of the Companies Act 1985 contains a variety of provisions designed to deal with situations in which a director has a conflict of interest. The present mixture of regulation in Part 10 has grown up piecemeal, without any attempt to look at directors' transactions with their company in the round. As a result, the provisions of Part 10 are widely regarded as excessively complex and fragmented. The Government does not favour repeal of these provisions: as respondents to the CLR and the Law Commissions made clear, codification of the general duties will not in itself prevent the abuses which caused these provisions to be enacted. At the same time, it is clear that Part 10 is in need of major reform, and the Bill will restate, as well as amend, the current requirements.	The Bill will restate and amend Part 10 of the Companies Act 1985 in order to: simplify the overall structure, so that the provisions are more accessible to directors and other users; deregulate where the existing provisions are unnecessary or excessive; reflect modern business practice e.g. by giving shareholders the right to receive copies of directors' service contracts on payment of a fee; and clarify the law where the existing provisions are unclear or incomplete e.g. by making it clear that the rules relating to *ex gratia* payments for loss of office do not extend to payments that a company is bound to pay to a director on his retirement or other loss of office because it has a legally binding obligation to do so.	**Negligible extra cost**	The main benefits of this measure are: removal of company law requirements which provide very little benefit (e.g. in relation to disclosure of directors' shareholdings); provision of greater freedom and flexibility (e.g. by permitting companies to make loans to directors with the consent of shareholders); simplification of the provisions to make them more accessible.	Most of the proposals for amendments to Part 10 of the CA 1985 have their origins in the Law Commissions' Consultation Document: *Company Directors: Regarding Conflicts of Interest and Formulating a Statement of Duties*, and their Report bearing the same title. These were considered at various stages of the CLR, and for the most part the CLR endorsed the Law Commissions' recommendations.
	Directors' liability	**The Bill restates the provisions of the 1985 Act, as amended by the Companies (Audit, Investigations and Community Enterprise) [C(AICE)] Act 2004, without substantive amendment.** The C(AICE) Act 2004 introduced two significant changes to the law related to directors' liability (c.f. notes)			The C(AICE) Act 2004 allows companies to: indemnify directors against most liabilities to third parties; pay directors' legal costs upfront, provided that the director repays if he or she is convicted of any criminal proceedings or judgement is given against him or her in any civil proceedings brought by the company or associated company.
	Who can be a director?	At least one director must be a	**Costs likely to be negligible**	Enforcement of legal obligations	The Bill also removes the

Policy Area	Policy	Measures	Costs	Benefits	Notes
	Company law currently allows all legal persons (for example, other companies) to be company directors. This flexibility can sometimes be abused (eg those who wish to conceal who is controlling a company may use a company with corporate directors to help obscure the identity of the individuals involved; or those who wish to reduce the risk of prosecution may use a company with child directors). The Government considered the option of banning corporate directors. However, an outright ban might harm those companies who make use of the current flexibilities for entirely legitimate reasons.	natural person. No director may be under 16 exceot in circumnstances specified by regulations. These provisions are intended to ensure that every company will have at least one individual who can, if necessary, be held to account for the company's actions. It is also consistent with the increased thrust being placed in the Bill on the importance of directors understanding their statutory duties.	There are approx 64,000 corporate directors, but most of these boards also have directors that are natural persons. The number of companies with only corporate directors is **small**. There are approximately 500 companies that have directors under the age of 16. However, these companies will only have to appoint a replacement director if the removal of the child director leaves them without a director who is a natural person.	generally (and therefore compliance) will be improved by ensuring that every company has at least one director who is an adult, natural person. Quantifiable benefits are likely to be small but the measures should result in a reduction in the incidence of fraud.	restrictions on directors over 70 years old.
Minority shareholder rights Derivative claims are the route by which shareholders, usually minority shareholders, are able to enforce the company's rights where directors have breached their duties (since in these circumstances it is unlikely that the directors, who usually act on behalf of the company, will want to take action).	**Putting derivative claims on a statutory footing.** The Bill will put derivative claims on a statutory footing. This proposal has been recommended by the Law Commission and endorsed by the CLR.	This measure will provide greater clarity about the criteria which the courts will apply in deciding whether a derivative claim should proceed. .	It is possible but unlikely that the change will significantly affect the number of cases brought. The number of such cases is low and the impact on the courts likely to be **negligible.**	The number of occasions on which these provisions are used, and hence the direct financial benefit of clarifying them, is small.	
Auditor liability and audit quality The Government is keen to encourage confidence in the statutory audit and to ensure a strong, competitive and high quality audit market. In the aftermath of a company failure, those who have suffered losses may look to the auditors as having the deepest pockets of all of those they can pursue for compensation. Consequently, the auditor may bear 100% of the compensation even where other	**Proportionate liability by contract** Shareholders should be able to agree a limit to the auditor's liability arising from damage incurred by a company, but subject to the limitation being over-ridden if the Courts decide that it is operating unfairly. The existence of any limitation of liability would be shown in the company's annual financial statements. The company would be left to recover, as part of a separate	The Bill will have the effect that: a company and its auditor will now be allowed to agree a liability limitation agreement. This would require shareholder approval. In the event of damage being caused to the company, the court will be able to set aside the limitation agreement if it finds that it imposed a limit that is not fair and reasonable in the circumstances of the particular case.	As companies and auditors will only agree liability limitation agreements where both believe it is in their commercial interests, **there should be no net costs of the change overall**. Indeed agreements will only happen when each party sees a benefit. However, in cases where a company has agreed a limitation agreement, and it suffers damage that should have been prevented by its auditors, the company – or its liquidator – is likely to be able to recover less of the damages from the auditor.	The Government believes that the proposed reforms will yield **two key benefits that are difficult to monetise**: Maintenance of a strong and complete audit market characterised by (at least) the existing levels of competition. We would expect companies to agree to liability limitation agreements only if they obtain some consideration in exchange, e.g. a reduction in the audit fee. There is no basis on which we can quantify what reductions	As agreeing to liability will reduce the auditors' risk exposure, it is assumed that directors will seek reductions in audit fees – or other concessions in the terms of the audit contract – in return for agreeing to limitation of liability.

Policy Area	Policy	Measures	Costs	Benefits	Notes
parties may be at least as much to blame for the loss. In the light of consultation the Government is persuaded of the benefits of changing the audit liability regime. The reforms have three main parts:	action, the loss suffered for which some other defendant (e.g. another professional adviser) was responsible. The auditor would continue to be fully liable for any fraud to which he was party		Rather than being able to recover up to 100% if there are no other defendants available, they will get either the amount specified in the agreement, or the amount the court finds to be fair and reasonable if higher.	there will be in practice, but to give an idea of potential scale, the average audit fee for a FTSE-250 company is £1.3m (Source: *Financial Director* magazine, Jan 2005).	
legislating to allow shareholders to agree limitations to the liability of auditors; at the same time, improvements to the quality of the audit process; and, the establishment of an on-going dialogue by which further enhancements can be identified and then implemented. Government sees these three parts making up a balanced package of measures to improve the operation and quality of the audit market, and believes it is important that all of these go forward together. The Government believes that it would be inappropriate to change the law on who can sue the auditors in the civil courts. However, given the wider importance of audited financial statements, the Government proposes to make it a criminal offence knowingly or recklessly to give an incorrect audit opinion	**Improvements in audit quality and value** These measures were proposed after discussions with auditors, investors, business and regulators.	**Disclosure of terms of audit contract** The Government expects that listed companies will establish a voluntary code requiring the publication of audit engagement letters. Failing that, the Bill provides powers to create regulations requiring publication.	Most listed companies have websites of their own, and the **costs of putting another document on it will be insignificantly small**. The few listed companies that do not have websites will be able to publish on some other site. If there are 100 listed companies without their own website, and the cost – including internal administration – of taking space on a commercial website is £100, then the total cost imposed by this measure would be £10,000.	**Impossible to monetise**. These measures will improve transparency and therefore have a positive effect on audit quality.	
		Shareholder rights to question auditors Shareholders will be able to require the company to publish on a website statements raising questions about the accounts and the auditors. These questions can then be considered at the next general meeting.	The net cost of website publication is likely to be similar to the preceding measure, i.e. around £10,000. Auditors may feel they need to do more preparation for meetings when issues have been raised. If 20% - 40% of the 1,400 quoted companies 260-520 have statements published, and half of the affected auditors feel they need an extra 5–10 man-days to prepare at a cost of £1750 per day, then the total cost of this measure will be: **£1.2m – £4.8m per annum.**	**Impossible to monetise**. These measures will improve transparency and therefore have a positive effect on audit quality.	
		Publication of statements by departing auditors When a firm stops acting as auditor of a listed company, it will have to make a statement of the circumstances. This will be circulated to shareholders, filed with the registrar, and may need to be sent to the appropriate regulator.	The only significant element of cost will be that when an auditor leaves a listed company, there will more often be a need to circulate his statement to the members. If the average length of an auditor's term is 5-10 years, then of the 1,400 quoted companies, 130 to 260 will leave each year.	**Impossible to monetise**. These measures will improve transparency and therefore have a positive effect on audit quality.	When an auditor leaves office, the law currently requires him either to state that there are no circumstances connected with his resignation that need be brought to the attention of members or creditors of the company, or else set out the circumstances for the company to circulate.

Policy Area	Policy	Measures	Costs	Benefits	Notes
		Lead audit partner's signature on audit reports The bill will define a "senior statutory auditor" as an individual, within an audit firm, qualified to be appointed as auditor. Audit reports will have to contain: a) printed, the name of the audit firm and of the senior statutory auditor, b) the senior statutory auditor's signature	**No additional costs**	**Impossible to monetise**. These measures will improve transparency and therefore have a positive effect on audit quality.	Auditors already sign audit reports, in the audit company's name. It is assumed that generally the same lead audit partner will sign the report in his or her own name.
	Audit Offence	Anyone who knowingly or recklessly causes an audit report to be misleading, false or deceptive will be guilty of an offence. The maximum penalty will be an unlimited fine.	**No net costs.**	The offence will increase the incentive on auditors to do everything necessary to check if there are any problems with a company's accounts; and to reflect any problems honestly in the audit report. The benefit in improved reliability of audit reports and accounts is impossible to monetise.	If any auditor who is currently being reckless as to whether audit reports are accurate, expends more effort to avoid prosecution to avoid this offence, it is assumed that the increase in quality leads to a net benefit.
Company takeovers The Takeover Panel has overseen takeover regulation in the UK on, essentially, a non-statutory basis for the past 36 years. Implementation of the Takeovers Directive requires the introduction of a statutory framework but the intention is to preserve the independence and authority of the Takeover Panel and its capacity to make and enforce rules regulating takeover activity.	**Implementation of the Takeover Directive.** The Takeovers Directive - which completed the European legislative process in April 2004 - lays down minimum standards for takeover regulation across the Community, and applies many of the core values of the UK system at the EU level. It will also reduce barriers to takeovers in the Community through improved shareholder protection and access to capital markets.	The Directive lays down minimum standards in relation to the regulation of takeovers of companies and provides for the protection of their stakeholders. Details of the Directive and its associated costs and benefits are set out in the consultation document – Company Law: Implementation of the European Directive on Takeover Bids[1]	The partial RIA in the consultation document estimates that the cost per company complying with Article 10 of the Directive in the first year following implementation would be approximately £400 – £800. Costs in subsequent years would depend on the extent to which the circumstances of the company changed during the course of the reporting year but would be less. The Directive applies only to companies whose shares are admitted to trading on a regulated market. There are approximately 1,700 such companies incorporated and traded in Great Britain and therefore the cost for all GB companies is estimated to be between **£680,000 and**	The principal benefits likely to arise from the Directive are in relation to the possible encouragement of cross-border takeover activity as a central element of the EU Financial Services Action Plan3. **These benefits are difficult to monetise.** Takeover activity can serve to exploit business synergies, act as a discipline upon corporate management and allow shareholders to sell their shares for a price above the existing market value. Such advantages can benefit all those with a stake in the markets, whether directly or indirectly (such as through pensions funds). There are a number of specific provisions in the Directive that should be helpful in freeing up	The Directive will not require significant changes to the Takeover Code since much of the substance of the Directive reflects the approach already adopted in Great Britain. Accordingly, very few costs will be imposed on companies resulting from the implementation of the Directive. In addition, since the Directive applies only to companies whose shares are admitted to trading on a regulated market, and the current Takeover Code applies to all public companies, it will not bring more companies within the scope of takeover regulation. The one exception to this basic premise is the disclosure requirements that will be imposed on all companies with shares that are admitted to

[1] Available at http://www.dti.gov.uk/cld/current.htm

Policy Area	Policy	Measures	Costs	Benefits	Notes
			£1,360,000 per annum. However, these costs may overestimate the true costs. The partial RIA presents a number of mechanisms that may cause these costs to be reduced.	the market and making it more transparent. These measures are set out in the consultation document.	trading on a regulated market under article 10 of the Directive. Companies will be required to include various facts and figures relating to the control and structure of their shares in their annual reports and to make a report to their shareholders at the company's AGM.
	Transparency of Voting by Institutional Investors	Gives the Government the power to make regulations requiring certain categories of institutional investors to disclose information about their exercise of the voting rights attached to shares.	Costs are expected to be around £6m - £9m p.a., as information to be disclosed is readily available and distribution should not be expensive. Estimates are in line with US estimates, but are sensitive to underlying assumptions and could increase or decrease after final proposals are consulted on.	Enhanced transparency could be expected to enhance accountability to beneficiaries and clients and improve the efficiency of institutional investment. If just 2% of UK listed companies increasing their rate of return to shareholders by a modest 0.1% p.a., the annual benefit would be in the region of £30 million p.a.	
Statutory Audit	**Implements the transparency obligations contained within the Audit Directive (8th Company Law Directive)**	The Directive requires that statutory audit firms make available to the public certain specific pieces of information such as the names of entities that they audit.	**Small administrative costs** associated with modifying information that statutory audit firms already make available to the public on their web sites.	**Difficult of monetise**	

Objective 2: Better Regulation and a "Think Small First" approach

Policy Area	Policy	Measures	Costs	Benefits	Notes
Improving accessibility Although the vast majority of UK companies are small, company law has been written traditionally with the large company in mind. The provisions that apply to private companies are frequently expressed as a tailpiece to the provisions applying to public companies. For example the frequently consulted Part 7 of the Companies Act 1985 (Accounts and Audit) is an extraordinarily complex piece of legislation that many users find hard to follow. .	**Simpler law** The Government intends that the Bill should reset the balance and make the law easier for all users to understand. In particular the Government believes that provisions relating to: accounts and audit, meetings and resolutions, company formation, and reporting requirements for small companies have been set out in a much clearer way. Consultation has confirmed that these areas are also those which smaller firms, in particular, find most important in their day-to-day operations, and the benefits of achieving more accessible law should be correspondingly significant.	Clearer structure and language The Bill is structured in order that the provisions that apply to small companies are much easier to find. Where the law is hard to understand, there are significant costs, uncertainty and risks and compliance is reduced. The Bill therefore seeks to achieve much greater simplicity and clarity of language, but not at the expense of accuracy and certainty.	**Some limited familiarisation costs**. These are not expected to be significant.	Simpler law and better guidance will to reducing agency costs. SME representatives have argued persuasively that simpler law, which "fits small business reality" better, will greatly increase business confidence in the overall regulatory environment and increase compliance. SME representatives estimate that simpler law will yield savings **in the region of £30m pa.** However, the actual cost savings will depend on final drafting of the Bill and its regulations. The full benefits of simpler law will also depend crucially on the success of parallel non-legislative measures such as accessibility and guidance.	This policy runs as a thread through the drafting of all the provisions of the new Bill and, wherever possible, it is intended that the new law should be presented in an accessible and user-friendly fashion. In particular, where the Bill is making substantive changes with the effect of replacing entire portions of the existing Act, the opportunities for presenting the new law in a simpler and more coherent way are great and have been fully taken up.
					Guidance will also follow the principles of "Think Small First." The great majority of companies are small and we will write the guidance to meet their needs so that they can easily identify the basic day-to-day requirements that apply to them. Companies House will be offering web incorporation from 2007 and this will be supported by easier access to relevant material, for example the new simplified Private Company Articles.
	Better guidance and improved Companies House website Many parts of company law are inherently complex and if we are to make it easier to understand for both companies and their advisers it is important that it is supplemented by clear and comprehensive guidance. Companies House are committed to further improvements to their website, including a wider range of web-based guidance, better links to related websites and access to up to date companies legislation.	Companies House already provides extensive and well respected plain English guidance both in booklet form and increasingly through their website. We intend to increase the coverage of this guidance. It will in future include aspects of company law that go beyond a company's responsibilities in relation to Companies House. For example, we will publish clear new guidance on the important area of directors' duties.	There will be some costs associated with the enhanced provision of guidance material, but it is difficult to estimate the additional costs at this stage. It is also difficult to separate out those costs arising directly from the Bill from those arising from other requirements such as the need to facilitate electronic filing. These costs will in principle be passed on to companies in the form of higher transaction costs.		
Resolutions and meetings Much of company law still assumes that the general meeting	**Abolishing statutory AGMs for private companies** All companies are currently required to hold an Annual	In addition to abolishing the default requirement to hold an AGM, private companies will not be required to lay their accounts or to appoint an auditor, if they	There should be **no costs** arising from these measures, as they are essentially permissive.	Data from the 2002 White Paper "Modernising Company Law", obtained through consultation with stakeholders, confirms that	It should be noted that members, whether of private or public companies, will retain the existing right for a minimum of

Policy Area	Policy	Measures	Costs	Benefits	Notes
is the forum by which shareholder decisions are taken. The law is also written from the perspective of the public company with derogations for the small, private company. The Bill will include measures to streamline company decision-making processes and to bring them more into line with the realities of modern business life. Provisions relating to decision-taking will be restated in a form that should make it easier for the small, private company to understand the basic definitions and requirements for passing a resolution, with additional requirements for public and then quoted companies holding general meetings following on.	General Meeting (AGM) at least once a year. Private companies may opt to dispense with AGMs, but only if all their members agree. The policy intention is to abolish the default requirement for Annual General Meetings for private companies.	have one, at a general meeting. No special statutory provision is needed for private companies that wish to continue to hold AGMs, lay their accounts and appoint an auditor at the AGM. They will be able to incorporate the necessary provisions into their articles voluntarily if they so wish.		changes in this area are likely to produce some of the most significant deregulatory benefits, as small, private firms may be able to avoid the need for unnecessary meetings. Annual savings are estimated to be around £50 – £150 per firm. Assuming 40% - 60% of the 1,245,000 private companies (ie. 498,000 to 747,000) take advantage of the change, the savings will be **£25m - £112m per annum.** Although at first sight these measures might seem to make it easier for companies to disenfranchise shareholders, in practice more streamlined and efficient mechanisms for taking shareholder views ought to increase effective shareholder engagement.	10% of the vote to require a general meeting to be called if they wish.
	Written resolutions The Bill will make it easier for private companies to take decisions by written resolution. It will provide that in future, a simple or 75% majority of those eligible to vote will be required for a written ordinary or written special resolution to be passed, rather than unanimity.	This reform should enable small private companies to take decisions more quickly and efficiently and, together with the proposal to remove the requirement for private companies to hold AGMs, should relieve many small private companies from the burden of having to hold formal general meetings.			
	Short notice requirements The Bill will make it easier for private companies to call meetings at shorter notice than the minimum statutory period if a requisite majority of shareholders agree.	The majority required to call meetings at short notice is currently 95%, although private companies may elect to reduce this majority to 90%. The Bill will make 90% the default majority required for short notice meetings of private companies.			
Company constitutions A feature of British company law is that the members are free, subject to certain legal constraints, to make their own rules about the internal affairs of their company. These rules are a key part of a company's constitution and can generally be found in a company's articles of association. Since 1856, model articles have been provided for certain types of companies by law, for example, Companies Act 1985 Table A provides model articles for private companies limited by shares and public companies. Table A operates a default set of articles for such companies.	**Reform of Private Company Articles** Although Table A has been revised several times over the past 150 years or so it remains a product of the 19th Century both in terms of the language that it uses and its substance. Table A is user-unfriendly, poorly laid out and often unintelligible to non-specialists; much of Table A is taken up with matters which are remote from the concerns of smaller companies (so that it is not unusual for private companies to have articles which are completely irrelevant to the owners and managers of such	Following the recommendations of the CLR, the Government considers that reform of Private Company Articles is an important part of making our company law fit for purpose in the modern economy. The Government proposes that in future there should be: a radically simplified set of model articles for private companies limited by shares, reflecting the way that small companies operate; a separate set of model articles for public companies limited by shares (similar in scope to the current Table A, but with clearer layout and drafting);	There will be some familiarisation costs associated with learning about the new legal requirements. However, these are expected to be **negligible.**	A Simpler Private Company Articles will enable high street solicitors to provide advice to companies. This will increase competition for legal services and should drive down the costs incurred by businesses in seeking such advice. However, it is not possible to separate out specific costs associated with Table A advice from those incurred more generally in the provision of legal services.	The Bill contains a power for the Secretary of State to prescribe, by secondary legislation, stand alone model articles for different descriptions of companies. Providing separate model articles for private companies limited by shares and public companies will ensure that small and medium sized companies are not encumbered by the complex set rules appropriate for the articles of large companies By the time that the private company articles come into force, guidance on the new model articles (and other linked areas, for example, conflicts of interest and special resolutions) will be available from

Policy Area	Policy	Measures	Costs	Benefits	Notes
	companies); Table A does not take account of recent changes in the law, for example the introduction of single member companies. In summary the result is that the vast majority of the provisions in Table A are irrelevant to almost all companies who are using Table A as their articles.	(for the first time) a full set of model articles for private companies limited by guarantee; and comprehensive, clear and concise guidance for small companies who are using, or thinking of using, model articles.			Companies House.
Company secretaries At present, all companies are required to have a company secretary. Directors of public companies (but not those of private companies) are required to ensure the secretary is suitably qualified.	The Government agrees with the CLR's recommendation that it should no longer be a requirement for private companies to appoint a company secretary.	Abolition of requirement that private companies have a company secretary	**No costs as change is permissive**	For the majority of smaller companies, it is unlikely that the requirement adds any value to the position that would anyway apply. Using data from the 2002 White Paper "Modernising Company Law" suggests estimated benefits of **£3.1m - £6.2m per year** (assuming that 5% of 1,245,000 private companies (62,250) are able to make savings of between £50 - £100 per year by not needing to employ a professional to act as a company secretary). This may be an under-estimate as over 500,000 companies with fewer than 5 shareholders have only one director in addition to the company secretary.	
Register of members Companies' registers of members are an integral part of their constitutional apparatus. They are necessary to ensure that the members can be contacted, whether by the company, by other members, or by others such as those wishing to make a takeover bid or otherwise wishing to influence the members in their exercise of their rights as members. Information about past members may be of great importance to the people concerned. Company law	**Information that must be entered on the Register of Members** CLR recommended that companies be permitted to keep entries relating to former members sepate from that for current members.	**Companies permitted to keep the prescribed information as they think fit**	**No costs as change is permissive**	Commercial sensitivities mean it is difficult to get a feel for how onerous and costly companies find the current requirements. However, ICSA suggest that for some large companies, at least, the savings will be substantial.	Present law is based on registers kept in bound books with some recent concessions for those kept electronically. The Bill will keep the public right both to inspect and to obtain a copy of a company's register of members, supported both by the ability to apply for a court order if the company refuses. There have been instances where these rights have been abused, for example using intimidation of shareholders to force a company to withdraw from a contract. The Serious Organised Crime and

Policy Area	Policy	Measures	Costs	Benefits	Notes
therefore requires companies both to maintain registers with essential contact details and, for companies with share capital, information about size of holdings, and also to make these registers publicly available. The register of members is *prima facie* evidence of the information it contains Companies' registers of members are also on the public record as their Annual Return to Companies House must include either the current register or, if a register has been returned in one of the 2 preceding years, the changes to it since the last return. The Bill will make some deregulatory changes to the requirements to make it easier for companies to maintain their registers without affecting their usefulness.					Police Bill includes measures to address such intimidation directly.
	How long information must be kept on past members . The CLR recommended the period for (a) keeping details of former members on the register and (b) statutory immunity for claims relating to entries both be reduced from the current 20 years to 12 years.	The Bill will provide that both periods be 10 years.	**No costs as change is permissive**	ICSA Registrars' Group estimate that annual saving from halving of the period for which entries of past members must be kept is in the **order of £2m per annum** across the registration industry. There would also be further ongoing savings on processing and storage as well as one-off cost savings. However, it is not possible to monetise these ongoing benefits.	In line with proposed change to the statute of limitation.
	Right of access register of members Protect right for proper purposes	A right for the company apply to court for relief from obligation if it appears that the information is being sought for an improper purpose.	**No cost as change is permissive**.	**The benefit is not directly financial.**	Policy is in response to abuse of the right to the information, for example to intimidate shareholders.
Capital maintenance and share provisions Companies limited by shares have traditionally been seen as a mechanism by which the owners (shareholders) of a company limit how much of their money is at risk. However, a company is also a way of protecting the company's creditors, and the rights of minority shareholders, as once money is paid into a company by its shareholders, this money (the company's capital) belongs to the company and can only be paid back to the shareholders in certain circumstances. The rules that give effect to these general principles are sometimes referred to as the capital maintenance rules.	**Deregulation for private companies** Capital maintenance is largely irrelevant to the vast majority of private companies and their creditors (the majority of private companies have an issued share capital of £100 or less) This is recognised by the 1985 Act, which carves out a number of exceptions to the capital maintenance rules for private companies only. However because the provisions which are of most interest to private companies are drafted as exceptions, private companies have first to understand all of the rules and then identify that an exception applies to them, and if so how it works. Moreover the exceptions, while useful, do not	**Simplification of capital maintenance provisions** The Bill will introduce a number of deregulatory measures to remove rules which appear unnecessary and burdensome for private companies, e.g. it will abolish the current prohibition on private companies giving financial assistance and introduce a solvency statement procedure for capital reductions for private companies There will also be a number of other deregulatory measures for all companies having a share capital, including: the introduction of a new procedure which will enable	**The proposed changes are permissive and, in the majority of cases there are no obvious costs associated with the proposed change.** Where there is a cost to the company (see specific examples below) this will be marginal and will be more than offset by the cost savings that flow from the de-regulatory measure in question.	**It is not possible to monetise all of the benefits** that will flow from the reform of the capital maintenance rules (there is no hard data on the cost to companies of complying with or "getting around" the current rules), but it is clear that the measures in the Bill will save companies both time and money as they will no longer have to structure their transactions in such a way as to avoid falling foul of the rules. In certain cases a company will also be able to avoid the necessity of going to court to restructure its share capital (e.g. in the case of capital reductions by private companies and in the case of a redenomination of share capital for all companies).	**Further reform for private companies** Whilst it would be possible to introduce further de-regulatory measures for private companies now (the 2nd directive only applies to public companies), such an approach would cut across the results of the CLR's consultations which showed considerable opposition to fundamental reform for private companies only. The Bill will therefore implement the key CLR recommendations for private companies only – i.e. allow private companies to provide assistance for the purchase of their own shares; and to reduce their capital provided the directors make a statement about the solvency of

Policy Area	Policy	Measures	Costs	Benefits	Notes
	simplify the law as much as is possible.	companies to convert their share capital from one currency to another; clarification of the law on transfers of assets within groups of companies; and removal of the requirement for authorisation in the articles for allotments of redeemable shares and for capital reductions.			the company.
	Deregulation for all companies In line with the recommendations of the CLR the Bill will de-regulate in certain areas for public as well as private companies.				**Reform of the law for public companies** For public companies, the current law on capital maintenance implements the requirements of the 2nd EC Company Law Directive ("the 2nd directive"). The CLR also proposed a range of other amendments to the capital maintenance rules, which are not being taken forward at this stage. The Government concluded that there was a risk that the proposed changes would either prove impossible because of the constraints of EU law, or be overtaken by the proposals to amend the 2nd directive (which are currently being negotiated).
Financial assistance The essence of the current provisions is that a company (and its subsidiaries) is prevented from giving financial assistance (broadly defined), directly or indirectly for the purpose of acquiring shares in the company. The current law is essentially protective (and is required for public companies by the 2nd directive) and aims to protect creditors and shareholders against the misuse or depletion of the company's assets.	**Abolition of financial assistance provisions for private companies** The CLR concluded that it was inappropriate for private companies to continue to carry the cost of complying with the rules on financial assistance as abusive transactions could be controlled in other ways, e.g. through the provisions on directors duties which will be being included in the Bill, or through the wrongful trading and market abuse provisions that	**The Bill will abolish the prohibition on the giving of financial assistance for private companies only.**	As the financial assistance rules for private companies are being abolished, there should be **little or no familiarisation costs** (i.e. companies and their advisers do not have to get to grips with an alternative set of rules).	Estimates provided by the Law Society to the CLR indicate that this measure may save **£20m pa** in transaction costs that are currently incurred.	For public companies, EU law imposes virtually a complete ban on the giving of financial assistance. The proposed amendments to the 2nd directive include a proposal to create an exception to the current prohibition on the giving of financial assistance – subject to conditions. Whilst the current proposal is not particularly de-regulatory, the UK would be able to revisit the current financial assistance regime for public companies if and when it exercises its Member State

Policy Area	Policy	Measures	Costs	Benefits	Notes
Although it is clearly important to protect the interests of creditors/minority shareholders, the rules on financial assistance, and the exemptions that are available for private companies, are extremely complex and it is generally accepted that they are capable of capturing potentially beneficial, or at least innocuous, transactions. As a result companies spend a disproportionate amount of time and money in structuring transactions in such a way that they do not contravene the prohibition.	have come into force since the 1985 Act. Private companies will therefore no longer be prevented from providing financial assistance for the purchase of their own shares.				option to implement the proposed changes at domestic level. More fundamental reform of the law for public companies would only be possible if this was achieved at EU level. The Government will continue to press for this.
Capital reductions by private companies The 1985 Act provides a means by which both private and public companies limited by shares may reduce their share capital (including share premium and any capital redemption reserve). The procedure can be time consuming and expensive as it involves confirmation by the court. 351 resolutions to reduce capital were filed with the Registrar in 2004, and 459 were filed in the first nine months of 2005. Informal soundings from stakeholders indicate that approximately 50% of these resolutions were for private companies.	**The Bill will introduce a new and simpler mechanism for capital reductions for private companies only.** In addition to the monetary savings associated with this policy, the new procedure for capital reductions also affords the company a choice in how it conducts such a re-organisation of its capital. In addition to the court approved and solvency statement routes for reductions of capital, private companies will continue to be able to purchase or redeem shares out of capital.	**The Bill will introduce a new and simpler mechanism for capital reductions for private companies only.** This will be available as an alternative to the current court approved procedure. The new procedure will require a special resolution of the company's members, based on a solvency statement made by the directors (i.e. the directors will need to confirm that the company is solvent at the time of the proposed reduction of capital and that it will be able to pay its debts within 12 months or the reduction, or, if it is proposed that the company will be wound up within that year, within 12 months of the commencement of winding-up). It will be a criminal offence for a director to make a solvency statement without having reasonable grounds for the opinion expressed in it.	**No obvious mandatory costs. The proposed changes are permissive.** Whilst it is envisaged that prudent directors may want to take legal advice before making a solvency statement (as there are criminal sanctions for getting this wrong), obtaining such advice will not be mandatory. This advice may amount to the solvency statement being audited (i.e. the company taking advice on its solvency) and the cost to the company will clearly depend on the size of the company and the nature of its business. It has, therefore, not be possible to estimate the average cost to companies who decided to obtain such advice.	The main cost to the company in effecting a capital reduction using the court approved route is incurred in dealing with the company's creditors (i.e. settling a list of creditors who are entitled to object and putting arrangements in place with those creditors which are sufficient to satisfy the court that the interests of creditors will not be jeopardised by the proposed reduction of capital). There are also court costs and associated legal and professional costs. It is difficult to come up with an average cost for a court approved capital reduction, informal discussions with stakeholders indicate that costs associated with a court approved reduction of capital are frequently in the region of **£100k, but in extreme cases concerning lots of overseas creditors these costs could be as high as £1m. These estimates are very approximate and have not been included in the total benefits figure.**	Whilst the CLR concluded that the new solvency statement procedure for capital reductions would render the private company rules on purchase of shares out of capital redundant, respondents to the White Paper consultation indicated that the repeal of these provisions would mean that companies may no longer be able to pay a premium out of capital on a purchase of own shares. This is an uncontroversial mechanism and, given that it is one of the objectives of the Bill to facilitate the operation of private companies, the Government considers that, notwithstanding the new procedure for capital reductions, the ability for private companies to purchase shares out of capital should be retained.

Policy Area	Policy	Measures	Costs	Benefits	Notes
Distributions and intra-group transfers of assets So as to protect the interests of the creditors of a company, company law contains restrictions on when companies can make distributions to their members (e.g. pay dividends). The 1985 Act lays down technical rules which determine what is a lawful distribution by a company to its members. These statutory provisions operate alongside the common law, which is expressly retained by the 1985 Act, and which remains an essential component in determining what amounts to a lawful distribution.	Intra-group transfers of assets are often carried out by reference to book value. However, the legality of this practice as been called into question by the decision in *Aveling Barford v. Perion* (see note). The Bill will clarify the law in this area.	The Bill will make clear that where the transferring company will have positive reserves (i.e. distributable profits) after the proposed transfer of an asset, it may transfer assets within the group by reference to the assets book (rather than market) value.	**No obvious costs.** We are clarifying what many people think is already the law.	This will remove any uncertainty about the current law, and also avoid the need for companies to carry out complex asset revaluations requiring significant professional advice and fees to advisers. Informal soundings from stakeholders suggest that the cost savings will be significant but we have been unable to quantify these savings.	It is understood that distributions and intra-group transfers of assets are often carried out by reference to book value (rather than market value) for a variety of business, administrative or tax reasons but because of the doubt created by the decision in *Aveling Barford v. Perion* Ltd, such transactions are commonly carried out in a more complicated way (often involving the revaluation of the asset and then its sale/distribution relying on section 276 of the current Act) or not proceeded with at all.
Application of share premium account Amounts transferred to the share premium account where shares are issued at a premium (i.e. for an amount more than the shares' nominal value) can (currently) only be used in specific, limited, circumstances.		In line with the CLR's recommendations, the Bill will provide that the **share premium account can no longer be used to write off a company's preliminary expenses** (i.e. on formation).	Companies will have slightly less flexibility than they do under the current law (i.e. they will not be able to use the share premium to write off preliminary expenses).	The proposed change will prohibit the erosion of the company's capital for the purpose of writing off preliminary expenses (thus preserving the subscribed capital for the benefit of creditors).	
Authorised share capital At the moment a company with a share capital is required to include a limit on the maximum amount of shares it can allot– called the authorised share capital – in its memorandum of association. This limit can be raised with shareholder agreement and in practice is normally set at a level that is much higher than it is anticipated the company will need.	**Abolition of authorised share capital** The authorised share capital bears no relationship to the actual issued share capital of the company and the CLR concluded that it, therefore, served no useful purpose.	As recommended by the CLR, the Government proposes to remove the requirement on the basis that it is an unnecessary piece of regulation. It will of course continue to be possible for shareholders to include provisions with a similar effect in an individual company's articles if the special circumstances of that company make such restrictions important to the shareholders.	Where an individual company wishes to restrict the total number of shares that the directors are authorised to allot, it will in future need to include a provision to this effect in its articles. Where the articles of individual companies do not already contain such a restriction, they will need to be altered and this will require a special resolution of the company's members. The cost to individual companies of amending their articles in these circumstances is not expected to be significant.	Companies will no longer need to worry about the ceiling on the number of shares that they are authorised to allot, or amend their articles to increase this ceiling when the company grows.	As a result of this deregulatory measure, companies will in future need to provide information pertaining to their share capital in the form of a "statement of capital" (see below).
As now, where any **alteration is made to a company's share capital**, the company will in future	A statement of capital is in essence a "snap-shot" of a company's share capital at a	Whilst this directive only applies to public companies it is important that the information on	**Small administrative cost**	Information on the register will be improved. **It is not possible to monetise this benefit.**	If a company to which this clause applies fails to follow the procedural requirements as to

Policy Area	Policy	Measures	Costs	Benefits	Notes
be required to give notice of the alteration to the registrar. Where this alteration affects the total number of shares allotted; the aggregate nominal value of those shares; the value of the individual shares which have been allotted; or the amount (if any) unpaid on those shares, this notice must be accompanied by a statement of capital.	particular point in time. For public companies, the requirement for a statement of capital is linked to the abolition of authorised share capital (see explanatory notes on [Part 18]: Allotment of shares and debentures). It implements Article 2 of the 2nd EC Company Law Directive which states: "the statutes or instruments of incorporation of the company shall always give as least the following information…(c) when the company has no authorized capital, the amount of the subscribed capital….".	the register is up-to-date. A statement of capital will therefore be required where a company which proposes to be formed with a share capital is formed under the Bill and, with limited exceptions (in particular where there has been a variation of class rights which does not affect the aggregate subscribed capital) where a company having a share capital makes an alteration to its share capital.			notice, the company and every officer of the company who is in default commits an offence. The penalty for this offence is a fine and, for continued contravention, a daily default fine.
Removal of shareholder approval for allotments of shares Currently, the directors of a private company limited by shares may only allot new shares (or to grant rights to subscribe for or convert any security into such shares) in the company if they are authorised to do so by the members in general meeting or by the articles.	The Bill contains a relaxation for private companies which will remove the requirement for prior authorisation in certain circumstances. Companies will, however, be able to restrict or prohibit an allotment of shares through their articles (i.e. insist that such allotments have prior authorisation).	As recommended by the CLR, for private companies only, the Bill will empower the directors to allot shares as they see fit (subject to pre-emption rights) providing that the company will have only one class of shares after the proposed allotment (i.e. there will be no need for the directors to seek prior authorisation of the company's members)	Individual companies who wish to restrict the directors' power to allot shares may need to amend their articles of association. **The cost of this is expected to be negligible.**	It is envisaged that the vast majority of companies will want to take advantage of the proposed relaxation, which will reduce bureaucratic burden and the costs of obtaining authorisation from the company's members (i.e. by resolution of the members or through the articles). **It is not possible to monetise this benefit.**	
Removal of requirement for prior authorisation for an allotment of redeemable shares Currently a company may only allot redeemable shares if it is authorised to do so by its articles.	**Remove unnecessary administrative burdens in respect to the allotments of redeemable shares.**	For private companies limited by shares, the Bill will remove the requirement for prior authorisation of the company's members (i.e. through the articles) in respect of the allotment of redeemable shares. Companies will, however, be able to restrict or prohibit an allotment of redeemable shares through their articles (i.e. insist that such allotments have prior authorisation). Both public and private companies will be free to issue redeemable shares without the need to specify the terms and manner of redemption of those	**Small administrative burden** for those companies who wish to build a restriction on the allotment of redeemable shares into their articles.	This will avoid the necessity for the members to give prior approval for such allotments (e.g. through the articles or resolution of the company's members), which may be more convenient for the members and directors alike.	Companies will need to include details of the terms and manner of redemption in the expanded return of allotments that is currently required to be made to the Registrar of Companies. It will also need to provide the Registrar with an up-to-date "snapshot" of its share capital after the proposed allotment (referred to here and elsewhere in the Bill as a statement of capital).

Policy Area	Policy	Measures	Costs	Benefits	Notes
		shares in their articles.			
Issue of warrants to bearer Companies currently have to issue shares in registered form and then convert these shares into bearer form.		The Bill will permit the direct issue of warrants to bearer in respect of fully paid shares.	**No obvious costs**	This removes an administrative burden of having to first make an entry in the register of members, only to immediately strike this out.	
Transfer of shares Where the directors refuse to register a transfer of shares they are currently not required to give reasons for this. The CLR considered that this interfered with an important property right and that the transferee should be entitled to receive information regarding the directors' refusal.		Where a company has refused to register the transfer of a share, the directors will in future be required to provide the transferee with such information about the reasons for the refusal as the transferee may reasonably request. This does not extend to providing the transferee with copies of board minutes.	There **may be a small cost to the company** in terms of corresponding with the transferee.	The person who a share has been transferred to (rather than the company) will benefit from this increased transparency and will be in a position to provide the company with such information as he may consider necessary to persuade the company that the transfer should be registered.	
Redenomination of share capital At the moment a company may issue new shares in any denomination it wants (e.g. euros, dollars, sterling or other). What it cannot do is convert its existing share capital into another currency without cancelling or buying back its existing shares (the shares it wants to redenominate) and issuing a fresh batch of shares in another currency.		**The Bill introduces a simplified procedure to enable companies, if they wish, to easily convert their share capital from one currency to another,** and to renominalise their shares, after conversion, to achieve round share values (i.e. avoid having shares with a value expressed in fractions of a currency after conversion).	There are **no obvious costs**. The proposed change is permissive.	The current procedure for redenominating capital from one currency to another is likely to involve a "buy-back" and cancellation of part of the company's share capital. Such procedures are frequently a time consuming, lengthy and expensive process. Whilst it is envisaged that only a small number of companies are likely to take advantage of the proposed change, these companies are likely to be amongst the largest and economically significant companies. Informal discussions with stakeholders indicate that the savings for such companies may be in the hundreds of thousands. These estimates are very approximate and have not been included in the total benefits figure.	
Notice period for pre-emption rights		A power is included in the Bill to vary this period (upwards as well as down but to no less than	No obvious costs but in any event, if this power was exercised in the future (i.e.	A regulatory impact assessment would be required if this power was exercised.	

Policy Area	Policy	Measures	Costs	Benefits	Notes
In line with the CLR's recommendations on pre-emption rights, and as supported by Paul Myner's recent review of pre-emption rights, the present statutory minimum period of 21 days for acceptance of rights offers will be retained.		14 days). This power will require an affirmative resolution of both Houses of Parliament.	under secondary legislation) a full regulatory impact assessment would be required at this time.		
Companies House	A number of changes will be made to ensure that the system for companies to file information with Companies House is kept efficient and business-friendly. Many of these will focus on encouraging and exploiting new forms of e-communication, and the Registrar (i.e. Companies House) will have greater powers to specify the form and manner in which companies must submit information. There will also be measures to help ensure the accuracy and timeliness of information on the public register.	The specific measure include: the law will state with greater clarity what information will appear on the register, and what will not; the ability for Companies House simply to telephone companies who have provided incomplete information, so that they can easily obtain the missing element without having formally to reject the incoming form; the ability to remove items from the public register which have been erroneously placed there or which are "surplus" and unnecessary.; where information has been properly placed on the register, but subsequently proves to be inaccurate or misleading, there will be a new and simple court-based procedure for ensuring that it can be removed.	Many of the proposed changes to the operations of the registrar are facilitative and the details of specific measures, for example new filing arrangements, will be set out in regulations. The changes will impose some additional costs on Companies House (and possibly on others such as formation agents, who may as a minimum need to familiarise themselves with the new procedures). One-off systems costs to Companies House may be of the order of £3m plus, which will need to be recovered from business in higher transaction charges over time, but it is difficult to separate the costs that are associated with the measures proposed in the Bill from the costs that will be incurred as a result of other administrative and European changes that are already in train.	The proposed measures have been designed to promote swifter and clearer communication between companies, the registrar and the outside world. In many cases they will facilitate the use of new e-technologies. However, it is difficult to separate and monetise the benefits associated with the Bill and those associated with reforms that are being carried out independent of the Bill.	These measures will be coupled with a new offence, making it unlawful knowingly or recklessly to deliver to the Registrar material which is misleading, false or deceptive in a material particular. This offence subsumes and replaces a number of specific existing offences.
	Company strike-off and restoration At present, only private companies are able to request voluntary strike-off from the register. This will be extended to public companies.	Other measures will make it easier to restore companies to the register where they should not in fact have been removed. Companies House will be able to do this by administrative means (in more straightforward cases), and simplifications will be introduced to current statutory court procedures to cater for other cases.			
Reports and accounts	**Simplification of Part 7**	The Government has therefore looked very carefully at possible	**Some limited familiarisation costs**. These are not expected	**Monetised benefits are included in the general**	

Policy Area	Policy	Measures	Costs	Benefits	Notes
	The accounting, auditing and reporting sections of the current law (Part 7 of the Companies Act 1985) are amongst the most relevant of all provisions in that Act to companies in the normal course of their business. A number of consultees, particularly smaller firms and their advisers, have said that it is hard for them to find and understand the requirements which relate to them because in the interests of brevity the approach has been to express some provisions as modifications of those which apply to larger companies.	ways in which the provisions could be restated in a more coherent way, making it clearer to users which provisions affect which categories of company. The Government considers that the clearest approach is likely to be to set out sequentially a separate, comprehensive "code" for each of the different sizes of company, starting with small, private companies, which can be read independently. The indicative clauses published in this document are drafted on this basis. However, this approach has disadvantages in terms of length and there may be some scope for setting out separately the limited number of provisions that are common to companies of whatever size.	to be significant.	**"improving accessibility" provision above.** Changes to the timescale within which small companies produce accounts, and measures to increase transparency, will be of benefit to third-party small company users of those accounts.	
	Time Limits Following external consultation the CLR recommended reducing filing times in order to reflect improvements in technology and the increased rate at which information becomes out of date as well as filing times in other countries which tend to be less generous than in the UK.	The bill reduces the time limit for private companies to file their annual reporting documents at Companies House after the year-end from 10 months to [9] months and for public companies from 7 months to 6 months.	Proposals to reduce filing times for private companies from the current 10 months could in principle impose transitional costs. However, consultation responses from small business organisations suggest that the time limit proposed (7 months) will not adversely affect current work patterns.		
	Abbreviated accounts Small and medium sized companies can currently file abbreviated accounts at Companies House. This enables them to keep some information confidential (for example on profit margins). The CLR recommended that the option be abolished in the interests of greater transparency and that instead companies should file their full statutory accounts.	Consultation showed that there were both proponents and opponents of abolition of this option. The Government has decided that the option, which is currently popular with a great many companies, should be retained, but that both small and medium sized companies should be required to disclose the amount of turnover for the relevant financial year.	There will be new obligations on public quoted companies to publish material on websites. Given that almost all quoted companies will now have effective websites, the incremental costs should be small, perhaps £200 - £300 x 1400 quoted companies = **£280,000 - £420,000.**		
Public/Private split	The key distinction between public and private companies is that private companies are not allowed to offer their shares to	The prohibition is maintained but a private company will no longer commit an offence if it makes an offer to the public. Instead, it			The first of the policy objectives is not new. Section 81 of the Companies Act 1985 currently prohibits private companies from

Policy Area	Policy	Measures	Costs	Benefits	Notes
	the public. The Government wishes to ensure that a private company: is prohibited from offering its shares or debentures to the public, or issue shares with a view to their being offered to the public by another person; and may be required to re-register as a public company if it breaches that prohibition.	may be compelled to re-register as a public company or, if the company does not satisfy the requirements for re-registration, and it is impractical or undesirable for the court to require it to do so, it may be wound up.			offering their shares and debentures to the public. However, the second objective will be new, and will be enforceable by a power for various persons (including the Secretary of State) to apply to the court for an order that the company must re-register as a public company.
Jurisdictional migration	The Government's proposals regarding jurisdictional migration encompass two conceptually distinct provisions: to enable a company registered in the United Kingdom to transfer its registered office between England and Wales, Scotland and Northern Ireland; to enable: (i) a company registered in the United Kingdom to migrate to another jurisdiction (for example, another EEA State, or a third country); and (ii) a company formed under the law of a jurisdiction other than the UK to migrate to the UK without, in either case, forming a new company in the 'incoming' jurisdiction.	The Government will provide by regulations a mechanism for companies to move registered offices between the different parts of the United Kingdom.			Since the publication of the CLR's Final Report the European Commission has consulted on outline proposals for a company law directive on the cross-border transfer of the registered office of a limited company. The provisions of such a directive (14th) would supersede the CLR recommendations in respect of the migration of companies between the UK and other EEA States. We will await the expected 14th company directive on transfers between member states, and the *Sevic* case relating to cross-border transfers, before considering regulations to be introduced under the reform power.
Overseas companies	Under the current Act, there are in effect two parallel regimes, one applying where a company is incorporated outside the UK and Gibraltar, but has set up a branch in Great Britain; the other where a company is incorporated outside Great Britain and establishes a place of business in Great Britain. The CLR proposed that the place of business and branch regimes should be aligned. The intention is to achieve a regime that is as similar as possible for all oversea companies, subject to	Part 23 of the Companies Act 1985 and certain other relevant sections that currently make provision for oversea companies will be repealed and new and extended replacement provisions will be set out in subordinate legislation. The regulations will implement the requirements of the 11th company law Directive and the relevant provisions of the Audit (8th Company Law) Directive.	Responsibility for the approval of third country auditors will fall to the Professional Oversight Board for Accountancy (POBA). It is not possible to monetise the costs (if any) that will be passed onto business.		The provisions relating to overseas companies are a good candidate for removal from primary legislation and placing into subordinate legislation because of their relatively self-contained nature, their technical nature and because they do not relate to UK companies.

Policy Area	Policy	Measures	Costs	Benefits	Notes
	EC law. To extend UK audit supervisory regulations to auditors of UK listed companies who are not based in a Member State.				
Authorisation of political donations and expenditure The Companies Act requirements relating to the control of political donations and expenditure by companies were introduced by the Political Parties, Elections and Referendums Act 2000 as part of the Government's response to the report on the funding of UK political parties by the Committee on Standards in Public Life.	The Bill largely restates the current provisions, but will make them more business friendly.	The main reforms will: make it clear that certain non-contentious "donations" (e.g. provision of a meeting room for trade union officials) are not caught by the requirements; allow companies greater procedural freedom in obtaining shareholder authorisation; make the provisions relating to remedies in case of unauthorised donations or expenditure less onerous to directors.	**No obvious costs**	**Benefits cannot be monetised**.	As noted in "Reports and Accounts" above, the threshold for disclosure of political donations will be raised to £2000.
Transparency Directive The Transparency Directive is an important part of the Financial Services Action Plan. The Financial Services Action Plan has been the European legislative framework for developing the Single Market in financial services. The purpose of the Transparency Directive is to enhance transparency in EU capital markets. It does this by establishing rules on periodic financial reports and disclosure of major shareholdings for issues whose securities are admitted to trading on a regulated market in the EU. The Directive completed the European legislative process on 15 December 2004 and must be implemented into national law by all Member States no later than 20 January 2007.	**Implementation of the Transparency Directive** Most of the requirements of the Transparency Directive can be implemented by secondary legislation using powers under Section 2(2) of the European Communities Act 1972. The Treasury will consult on proposed regulations to be made under the European Communities Act in due course. However, those parts of the Transparency Directive relating to the disclosure of shareholdings – historically part of company law - require primary legislation. The Government therefore proposes to include the necessary provisions in the Bill.	The Directive requires Member States to impose obligations on: issuers of securities, which are traded on a regulated market in the Member State, to disclose certain information; and shareholders to disclose certain information to the issuer whose shares they hold. Member States also have to appoint a competent authority to supervise these obligations. In the UK this will be the Financial Services Authority (FSA). For the majority of the Directive's provisions, the FSA already has sufficient powers under the Financial Services and Markets Act 2000 (FSMA) to permit implementation by way of regulations made under the European Communities Act 1972.		The reduction in scope of the new regime, compared with the existing regime, **is expected to reduce compliance costs in this area.** Further benefits include a measure of deregulation (non-traded limited companies will be excluded from the scope of the regime) and greater harmonisation of European disclosure requirements.	
	Disclosure of shareholdings	In order to bring together			

Policy Area	Policy	Measures	Costs	Benefits	Notes
	The FSA currently has no powers under FSMA to make rules in respect of disclosure of shareholdings. The existing requirements for shareholders to disclose substantial shareholdings are set out in Part 6 of the Companies Act 1985.	supervision of all the Transparency Directive obligations under one competent authority, the Government proposes to transfer this responsibility to the FSA. Accordingly, Part 6 of the Companies Act 1985 will be repealed in so far as it relates to a shareholder's continuing disclosure obligations.			
	Scope of the FSA disclosure regime In relation to mandatory disclosure of interests in shares, the Bill will establish the scope of the new disclosure regime and give the FSA powers to make rules with regard to shareholder notification. Before the FSA can make rules, it must, under the provisions of FSMA, undertake extensive consultation with stakeholders and publish a cost-benefit analysis of its proposals for public comment. It is proposed that the scope of the FSA regime would be broadly similar to the scope of the regime under Part 6 of the Companies Act 1985, which imposes disclosure obligations in relation to an "interest in shares."	However, in order to reduce burdens, the Government is proposing to make a number of deregulatory changes to the current disclosure regime. redefine a disclosable interest in terms of the "control of exercisable voting rights". This change was favoured by the large majority of respondents to a consultation on company law reform undertaken by the DTI in 1995. retain a slightly wider scope in UK legislation than that required by the Transparency Directive in order to allow the FSA, following consultation, to apply disclosure requirements to those with control of exercisable voting rights in shares of particular issuers.			Sanctions for breach of notification obligations. Part 6 of the Companies Act 1985 imposes criminal liability on shareholders in breach of the notification rules. While the Directive does not rule out criminal liability, it does not require that Member States put in place criminal sanctions for breaches of notification obligations. The Government has concluded that it would be appropriate and proportionate to repeal the criminal sanctions and to give the FSA equivalent powers to those it has to deal with breaches of rules under FSMA.
Information about interests in company's shares	**Electronic communication is to be more clearly permissible in the legislation**	Notices issued by public companies concerning interests in shares need not be sent in paper form		This benefit is reflected in the estimated savings from e-communications above. **The specific saving is estimated to be £50,000 per annum** –50,000 letters @ £1 on the assumption that 50% of the 100,000 section 212 letters sent annually could be sent electronically	
	Checking of information on the register concerning third party information	As it stands, under section 217 of the 1985 Act, where a public company receives information		At £1 a letter, it is estimated that the **recurrent saving is £1m – £2m per annum.**	

Policy Area	Policy	Measures	Costs	Benefits	Notes
		from a section 212 respondent to the 212 notice that a third party is interested in its shares, it must notify that third party within 15 days. The third party may then apply to the company for removal of the entry if incorrect. It is estimated that the section 217 provision requires some 2 million 217 letters to be sent annually. We are removing the requirement to write to third parties.			
Transparency Rules	**Transparency Directive**	**Gives the Financial Services Authority the power to make rules for the purposes of the Transparency Obligations Directive**, voteholder notification rules and issuer notification rules. Voteholder notification rules will require holders of votes attached to shares to notify the issuers of those shares when the proportion of total votes that they hold reaches a specified level. Issuer notification rules will require issuers of shares to make public information notified to them by voteholders and other specified information relating to voting rights.	The Directive imposes a less extensive set of notification obligations than UK company law does presently, although the FSA will have the power to add to these. The Directive also changes the basis for disclosure from 'interest in shares' to 'control of voting rights'. Cost estimates assume the 1,383 Main Market UK issuers would be required to devote an additional half-day of compliance officer time at £400 per day, giving a one-off cost of approximately £290,000. If, for half of these 1,383 companies, a half-day of professional advice was required by shareholders at a cost of £2,000 per day, **the cost would be approximately £725,000.** The FSA will have limited establishment costs. While these have yet to be assessed, based on previous FSA experience, the cost of adapting existing systems (should they be deemed to be suitable for the new regime) **could be in the order of £250,000 - £500,000.** Rules relating to periodic disclosure are expected to be modest as they are broadly similar to current disclosure	**Financial benefits are difficult to quantify with precision.** The proposals will remove from scope companies whose securities are not traded, thereby reducing the regulatory burden for these companies. Changing the basis for disclosure can be expected to improve transparency of who holds effective control of voting rights. The Directive sets common requirements for periodic reporting by issuers whose securities are admitted to trading on a regulated market in the EU. These requirements can be expected to result in enhanced confidence and consistency in information disclosures, which would in turn support deeper and more liquid pools of capital in the EU.	

Policy Area	Policy	Measures	Costs	Benefits	Notes
			requirements imposed on companies admitted to trading on the Official List of the LSE. FSA must consult on its proposed rules and undertake detailed cost benefit analysis. The final cost of any additional disclosure requirements will be identified during the FSA's consultation process.		
Institutional Investor Voting	**Transparency of Voting by Institutional Investors**	Would give the Government the power to make regulations requiring certain categories of institutional investors to disclose information about their exercise of the voting rights attached to shares.	**A final cost estimate will only be possible once a regime has been developed and consulted upon.** However, an initial estimate is that costs could be expected to be between £6m - £9m p.a., as the information to be disclosed should be readily available and distribution should not be expensive. This estimate assumes firms would spend 4-6 days per annum compiling information at £250 per day (admin with some professional input). Therefore the annual cost per complying institutional investor would be between £1,000 – 1,500. Small- and medium-sized institutional investors are more likely to discharge their disclosure obligations by cross-referring to the voting records of a fund manager, thereby incurring minimal costs estimated at approximately 1 person day per annum. We assume the regime would probably impact on around 5,000 firms, with around the same number of smaller firms needing to cross-refer. Estimates are in line with US estimates, but are sensitive to underlying assumptions and could increase or decrease after final proposals are developed.	**Financial benefits are difficult to quantify with precision**. Enhanced transparency could be expected to enhance accountability to clients and members, improving the efficiency of institutional investment.	

Objective 3: Making it Easier to Set Up and Run a Company

Policy Area	Policy	Measures	Costs	Benefits	Notes
Company formation The law on the formation of companies is necessarily one of the most frequently used parts of the Companies Act. Evidence suggests that the GB formation process it is not, by international standards, particularly cumbersome for those who wish to form companies. Nonetheless, there have been suggestions for changes of substance to make the process smoother and more efficient, and the CLR was also concerned that improvements could be made to the drafting of the provisions to make them simpler and more readily comprehensible.	**Simplification of company formation process to make it easier to set up and run a company.** The drafting set out in the White Paper is designed to focus on the practicalities, for example the key requirements for a company to have a registered office and how that office can be changed. The draft clauses implement and reflect the CLR's key proposals, namely: one person should be able to form any sort of company; the key rules on the internal workings of the company should be in one document (the "articles"); there should be separate model articles for private companies limited by shares and public companies; unless a company positively chooses to restrict its objects neither the company's capacity, nor the authority of the directors to bind the company, should be limited by them; members can choose to entrench elements of the company's articles (making certain provisions harder to amend subsequently than would otherwise be the case);	**Simpler formation** Abolition of requirement to have an initial "authorised share capital" Abolition of the need for statutory declarations (legally attested signatures)	Simpler formation may encourage greater company numbers. Although, this is not automatically a good thing (if it displaces alternative otherwise efficient business vehicles), it is likely that it will lead to an overall increase in business activity. There have been some suggestions that excessively easy incorporation procedures could encourage the formation of companies for fraudulent purposes.	Savings are difficult to quantify. However, even small benefits may produce large savings given the number of formations per annum. Experts have suggested that the potential for savings here is great; but since the majority of incorporations now happen through agents, it is not clear how much of a reduction there will actually be in direct costs to companies. Overall the clearer procedures in the new Bill will yield monetised benefits in the range **£2m – £4m per annum.** Direct benefits not quantifiable. The removal of the requirement for statutory declarations should produce some direct savings of the order of (£5 x 100,000 incorporations per year) **£500,000 per annum**.	Measures reflect key CLR proposals with regard to making the provisions on company formation simpler and more readily comprehensible. The clauses also adopt the CLR's proposed replacement of statutory declarations with a statement of compliance. This approach has been adopted throughout the Bill.
Company names It is important that anyone can use a company's registered name to trace the company's record at Companies House and so find information about it easily and reliably.	**Reduce the risk that a company will be required to change its newly-adopted name.**	Update the rules relating to company names to reduce the risk that a company will be required to change its newly-adopted name.	None	Each year, 250-300 companies are directed to change their newly-adopted names because the name is too like one already on the index. This involves costs both for the company so directed and the company whose name was closely resembled by the newly-adopted name.	

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	Prevent the system for registering company names being abused by opportunists seeking to exploit another's goodwill or reputation in a name.	Power to appoint an adjudicator with power to require a company to change its registered name if the name was chosen primarily to exploit the reputation or goodwill of another.	There will be fees to cover the costs of the adjudicator. In theory companies will be able to recover these fees from the opportunist although this may be unlikely in practice. Either way the costs of adjudication will be **negligible.**	There are probably 10 – 50 cases a year of opportunistic registrations and the typical price sought by opportunists is £5,000 - £10,000. The benefits from this measure will therefore be in the range of **£50,000 - £500,000 per annum.** Also, vulnerable companies should be able to drop some continuing defensive practices.	The possibility of an adjudication is expected to deter opportunistic registrations. The Bill will also provide for Regulations to specify the trivial differences between names which will be ignored when deciding whether two names are effectively the same. They will also specify circumstances in which a name would be accepted notwithstanding that it would otherwise be considered the "same as" another: it is intended to use this power so that, for example, a parent company and its subsidiary may have names that differ by abbreviations such as "UK" or "GB".
	Remove unnecessary regulation over name changes. At present, a special resolution is generally needed for a company to change to its name.	Let companies set their own procedures for changing their name	None.	About 60,000 company names are changed each year. This provision will enable companies to adopt a cheaper procedure if they wish.	
Trading disclosures Companies are required to include their names in correspondence and signs at premises; further information is required in some circumstances. These requirements ease access to information about companies on the public record.	Remove duplication between requirements under Companies Act and Business Names Act.	Single set of requirements for the information the company must be included in correspondence and on signs at premises	**No obvious costs**	Direct savings will largely arise from removal of unnecessary requirements for displaying names in locations to which customers/suppliers have no access, and on the outside of all company premises. Numbers are unknown, but an assumption of a current cost of placing/maintaining names of £5 – £15 pa for 800,000 live companies would produce savings of around **£4m – £12m per annum.**	
Directors' home addresses The usual residential address of a director must be placed on the public record. There is provision for an exemption for a director at serious risk of violence or	**Make it possible for the home address of every director to be kept from the public record** The current system is satisfactory for the tiny minority of directors who can show they	Every director to have the option of: either providing both a service address for the public record and the home address for a record to which access is restricted;	**No cost as change is permissive.**	Direct savings may be around **£400,000 per annum** (on basis that currently 4,000 directors have sought orders preserving confidentiality for five years at a cost to them of perhaps £500). More importantly this removes a	The general effect of the current law appears to be to deter some people from becoming directors. At the same time, it is important that the service address functions effectively, and the law will be tightened to increase the

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intimidation.	are at serious risk but it has some weaknesses. For example, experienced directors may be unwilling to take directorships in controversial companies as their home addresses will already be on the public record; companies whose directors have addresses on the public record may be unwilling to do business with controversial companies; and it does not protect directors of companies whose customers or suppliers become controversial.	or providing their home address for the public record		real disincentive to those considering becoming directors of controversial companies. The current disincentive appears greatest in the biotechnology industry. Its removal may be a significant factor in helping retain and encourage the domestic biotech industry, with the benefits that flow from this.	obligation on directors to keep the record up-to-date, and ensure that the address on the public record is fully effective for the service of documents.

Objective 4: Providing Flexibility for the Future

Policy Area	Policy	Measures	Costs	Benefits	Notes
Powers The Government published a consultation document "Flexibility and Accessibility" in May 2004, which sought views on specific proposals to introduce new legislative powers as part of the Bill. The CLR had suggested that many areas of company law, particularly those where provisions were most likely to require updating over time, should be moved from primary into secondary legislation. However, as the Government's consultation document explained, it is not in practice easy to establish a clear dividing line between "core" provisions (which could remain in primary legislation) and "detail" (which could sit in regulations), and such a line might risk separating one subject into two places. The Government's proposal was therefore that changes to company law in future could be made by a special form of secondary legislation (rather than by primary legislation), to produce both reform and restatement of the law. This would further the fundamental objectives which the CLR identified, by helping company law remain flexible for the future and accessible to all of those who use it, particularly smaller firms.	**Powers to reform company law in the future** The introduction of powers of this type is not intended to take the place of making any necessary substantive reforms now, in the CLR Bill; nor is it intended to take the place of any restatement of the law in more accessible fashion where that can be accomplished in the Bill itself. The consultation exercise revealed substantial support for powers both to reform and to restate. The point was made that company law, unlike many other forms of "regulation", is the provision of a legal form which is to some extent mobile over time, and which can only work if it successfully balances various potentially conflicting interests, since otherwise people will use an alternative business vehicle (or the company form from a different jurisdiction). It is in a sense self-regulating, and reform by secondary legislation may therefore be more appropriate than for some other areas of law.	Consultation on the proposed reform power identified two very important requirements: there should be some form of broad criteria delimiting the exercise of the powers (reflecting the principles established for the reform of company law by the CLR), it would be important that this criteria did not function as excessively strict vires constraints, as this might introduce an element of uncertainty and potential challenge to orders made under the powers. there should be very strict requirements both for public consultation and for Parliamentary scrutiny. These will be based very much on the procedures currently in place for Regulatory Reform Orders under the Regulatory Reform Act [2000].	**No obvious costs**	**Should yield significant benefits in the future as the law will be more responsive to the evolving business environment**	
Company Investigations The Government is keen to ensure that there is effective management of the large investigations undertaken by Companies Act inspectors.	Administrative measures are being reviewed in order to help avoid prolonged and unduly expensive inspections. However, there is also a need for new statutory provision. A new power will be introduced to enable the Secretary of State to direct Companies Act	Additionally, there will be an amendment to section 8 of the Company Directors Disqualification Act 1986 so that the Secretary of State can make a decision to apply to the Courts for the disqualification of a company director in the light of any information obtained by	**No obvious costs**	Benefits will depend upon if/how power is used, but **cost savings unlikely to be large**	

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	inspectors, both at the outset of and during the life of an inspection, as to the scope, conduct, timing and certain other matters in relation to their investigation, and to discontinue an investigation.	Companies Act inspectors, without the need for the information to be included in a report by such inspectors.			
Paper free holding and transfer of shares	The Government has welcomed the work of an industry working group which has been looking at options for greater use of paper free holding and transfer of shares. The responses to the *Company Law Reform* White Paper of March 2005 showed strong support for this initiative, but it is also clear that more information is needed on the costs and benefits of a paper free approach. The Government does not wish to rule out any option at this stage.	Extension of the existing power relating to transfer of securities under section 207 of the Companies Act 1989 so that it could be used to permit or to require the paper free holding and transfer of quoted company shares.	**Further consultation will be carried out before a decision is taken on use of the power.**	**Further consultation will be carried out before a decision is taken on use of the power.**	

Miscellaneous Provisions

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Improving redress for consumers and intellectual property rights holders The Government has made a commitment in its Business Manifesto to combat intellectual property crime. The Government also published its Consumer Strategy earlier this year committing to improve consumer redress by consulting on making it easier for consumers to get evidence from public authorities to use in civil courts.	**Amendment of Enterprise Act Part 9** Amending Part 9 of the Enterprise Act 2002 to allow information to be released to any person for the purpose of a private civil proceeding could help to improve consumer redress and make it easier for intellectual property rights holders to obtain information to pursue civil action against counterfeiters.	Amendment of part 9 of the Enterprise Act to allow the release of information for the purpose of private civil proceedings in some cases only. Disclosure of information would be limited by identifying legislation under which information could be released.	**No additional costs for legitimate businesses are anticipated.** More cases might go to the civil courts as a result of the information. However, these cases are unlikely to be frivolous, as the information released should ensure that the case is strong. As a result, costs of defending cases are unlikely to fall on legitimate business.	**Benefits cannot be monetised.** Provisions will allow IP rights holders to pursue civil cases against counterfeiters, raising deterrent effect. Many millions of pounds-worth of counterfeit goods are seized annually, damaging brand reputations. Consumers will find it easier to pursue civil claims following injury as a result of faulty goods or services or falling victim to a scam.	There is a small risk that sensitive information could be released as a result. Every effort will be made to minimise this risk.
Oversight of actuarial profession A highly skilled, effective and innovative actuarial profession is essential if a range of difficult and important decisions concerning individuals' financial planning are to be soundly based. The oversight of the profession needs to promote, amongst other things, recognised, high quality and continuously developing actuarial standards where actuaries' professional conduct is transparent and they are accountable for their actions.	**Independent oversight of the actuarial profession including standard setting** Independent oversight of the actuarial profession will best achieve a transparent and consistent regulatory framework that ensures appropriate standards of conduct are maintained.	The oversight regime will be established initially on a voluntary basis. However, in order to achieve such a regime the existing statutory immunity for the oversight of accountancy and the audit profession will be extended to oversight of the actuarial profession. This means: Extending the activities in respect of which the Secretary of State can make a grant to include activities concerned with actuarial oversight Providing for different rates of levy to recover any part of the expenses of the oversight body	The actual costs arising from the measures are likely to be negligible. However, there are costs associated with the policy generally, those being the annual operating costs of the oversight body. It is expected that those costs will be **in the region of £1.8m per annum** based on £1.3 million per annum operating costs, £0.25m contribution to investigation and disciplinary case costs and £0.25m set up costs. The operating costs are based on an extrapolation of the costs of accountancy and audit oversight to cover the staffing of a new standard setter, an extension of the oversight body's remit into actuarial matters and a proportionate contribution to overheads. These costs rather than being associated with the policy generally could become a cost resulting from the measures directly should it become necessary for the levy power to be used in the absence of voluntary agreement to fund the regime.	**Difficult to quantify monetary benefits.** The Morris Review was commissioned by the Chancellor to look into a number of issues covering the actuarial profession and actuarial services arising out of Lord Penrose's enquiry into Equitable Life. The conclusion of the Morris Review, which was welcomed by the actuarial profession, was that independent oversight of the profession represented the best means of boosting public confidence with regard the integrity of professional actuarial standards.	

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Corporate Insolvency	**Assets subject to a floating charge should be, where necessary, available to fund the general expenses of liquidation.** The proper funding of liquidations ensures the orderly winding-up of insolvent companies and the appropriate scrutiny of director's conduct. This is in the general interest of the commercial community, in particular those who lend to companies and take security in the form of floating charges.	The insertion of a new section 174A to the Insolvency Act 1986 will ensure that, where necessary, assets subject to a floating charge will be available to fund the general expenses of liquidation.	**No net costs.** Floating charge holders will be financially deprived to the extent that assets subject to a floating charge are required to fund the general expenses of liquidation. We do not anticipate any net administrative costs for insolvency practitioners.	Insolvency Practitioners will benefit by virtue of being adequately funded to carry out their statutory and required duties as a liquidator. The corporate governance benefits of having an adequately funded liquidation regime with the accordant regulatory scrutiny of directors conduct is difficult to quantify. **Therefore, it is not possible to place a monetary value on this benefit.**	The provision will reverse the House of Lords' decision in *Buchler and another v Talbot and others in re Leyland DAF [2004] UKHL 9*, which was to the effect that the general expenses of liquidation could not be paid out of assets subject to a floating charge ahead of the claim of the floating charge holder. Government policy is such that the cost of liquidations is funded by way of a levy against the assets of insolvent companies and is therefore borne by the creditors. This provision gives effect to this policy by restoring the position to that which had been long accepted without contention prior to the House of Lords decision.