



Department for
Business, Energy
& Industrial Strategy

POST-IMPLEMENTATION REVIEW OF REGULATIONS PROHIBITING THE USE OF BEARER SHARES BY UK COMPANIES



August 2020



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<p>Title: Post Implementation Review of regulations prohibiting the use of Bearer shares by UK companies</p> <p>PIR No: BEIS027(PIR)-20-BF</p> <p>Original IA/RPC No: BIS BE 024</p> <p>Lead department or agency: Department for Business, Energy and Industrial Strategy</p> <p>Other departments or agencies: Click here to enter text.</p> <p>Contact for enquiries: Neil Golborne Tel: Email: neil.golborne@beis.gov.uk</p>	Post Implementation Review
	Date: 03/08/2020
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 16/09/2014
	Recommendation: Keep
	RPC Opinion: N/A

<p>1. What were the policy objectives of the measure?</p> <p>Bearer shares allow the legal ownership of a company to be transferred from one individual to another without the need to change ownership details on the issuing company's register of members. As the company's register of members only indicates that the share is held in bearer form, it is not possible to know who controls the company. The government abolished bearer shares as part of the Transparency and Trust package to improve our ability to understand who owns companies and ensure that the UK met global best practices in corporate transparency.</p>
<p>2. What evidence has informed the PIR?</p> <p>In carrying out this study we reviewed the original Impact Assessment, drew on data from Companies to make a judgement on policy effectiveness and drew on other evidence such as the OECD's 2018 progress report on Tax Transparency.</p>
<p>3. To what extent have the policy objectives been achieved?</p> <p>The review finds that the policy objectives have been achieved. Based on Companies House data, there is 100% compliance with the regulations suggesting that the regulation is achieving its aims of greater corporate transparency. Companies House further has a dedicated unit which monitors compliance.</p>

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: 

Date: 13/10/2020

4. What were the original assumptions?

The Impact Assessment assumed a wide range of compliance costs including familiarisation and the costs of share conversion. Subsequent estimates of the largest element of costs, i.e. share conversion costs, suggests that cost assumptions were realistic.

5. Were there any unintended consequences?

As many jurisdictions have introduced similar measures this has mitigated the risk of companies or bearer share moving illicit activity overseas.

6. Has the evidence identified any opportunities for reducing the burden on business?

Given the elimination of bearer shares in the UK there is no scope for reducing compliance burdens on business further as there are no recurrent costs.

7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

N/A

Scope of the Review

1. This post-implementation review (PIR) assesses the Abolition of Bearer Shares under the Transparency and Trust regulations 2014¹. The purpose of this review is to:
 - Assess whether the objectives of the regulation remain appropriate,
 - Review whether the regulation has achieved its original objectives,
 - Assess whether the objectives could have been achieved through a less onerous regulatory provision to reduce the burden on companies and/or increase societal value,
 - Assess whether the regulation is still required and remains the best option for achieving those objectives.

Objectives of the Regulations

2. The main objective of abolishing bearer shares was to enhance transparency and consequently deter illegal activity and improve enforcement outcomes, where misuse takes place, and promote good corporate behaviour. The original impact assessment (IA) cited OECD evidence that there was a connection between illicit financial flows and opaque corporate structures; it also set out World Bank evidence that in many grand corruption cases corporate forms are used to hide beneficial ownership and the true source of funds.
3. Bearer shares are problematic from a transparency perspective. This is because bearer shares can be transferred from one individual to another without the need to change ownership details on the issuing company's register of members. The register does not record who owns the share, it just indicates that the share is held in bearer form. The company is unable to know the identity of the owner of the bearer share unless they come forward themselves to claim a dividend (however, identity can still be concealed by using intermediaries).
4. Internationally the use of bearer shares can facilitate tax avoidance, as the tax payable depends on where the share is located not where the underlying asset is located, and money laundering. Further, the OECD noted² that data leaks, for example the Panama and Paradise papers, revealed the size and scale of offshore tax evasion. They explained that many of these schemes involved bearer shares to conceal true owners.
5. Therefore, the regulation aimed to abolish the existing bearer shares issued by 1233 UK Companies³ and transform them into ordinary shares. The purchase or switch to ordinary shares also requires the buyer to pay tax at the point of purchase. The regulation also sought to prohibit the creation of new bearer shares. This ensures that the UK fully meets

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf

²The 2018 OECD report can be found here: <https://www.oecd.org/tax/transparency/>.

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/324712/bis-14-908a-final-impact-assessments-part-a-companies-transparency-and-trust.pdf

international Global Forum on Tax Transparency standards and Financial Action Task Force (FATF) recommendations on bearer shares activity.

6. Increasing corporate transparency and reducing money laundering and other criminal activity remain objectives of Government policy. **We therefore conclude that the objective of the regulation remains appropriate.**

Has the regulation achieved its original objectives?

7. In this section we consider two issues, whether:
 - a. The initial objectives have been met, and
 - b. Whether there were any unintended consequences, e.g. movement of bearer shares to other jurisdictions.
8. Companies House has a Technical Offences Team who regularly monitor and pursue companies that have not complied with the legislation. A monthly report is produced listing all companies that continue to show bearer shares. Since the regulations were introduced, they have been establishing contact with the companies, encouraging compliance. If they do not gain compliance, the case, if suitable (e.g. directors based in the UK) will be passed to lawyers for consideration for prosecution.
9. Companies House reports that only 12 UK companies appear to have bearer shares⁴ compared to 1233 UK companies (787 of which were actively trading) who had bearer shares before the legislation was introduced. These 12 companies have a total of 40 shareholders who were identified as having bearer shares.
10. Of these 12 companies, 10 Companies with a total of 29 shareholders were either in the process of strike off or liquidation or were being restored. If a company is restored, then the bearer shares are automatically cancelled on restoration. In cases of liquidation or strike off there is little advantage to pursuing the shareholders especially as the bearer shares are automatically cancelled if the company were restored.
11. The remaining 2 companies with a total of 11 shareholders (1 company with 1 shareholder, the other having 10 shareholders) appear on the live register, albeit with an action code status indicating reminder notices have been issued, and their shareholders have historic shareholdings with a share class contain the word warrant or bearer shares. However, under the regulations, bearer shares that had not been converted to ordinary shares within 7 months of the measure coming into force were frozen. This means that the remaining 2 companies have shares that are effectively void.
12. The status of companies is constantly monitored by Companies House to ensure the highest possible compliance. Following the implementation of the regulations, the number of companies who currently have bearer shares has decreased from 1223 companies, to 2 companies whose shares are now effectively void. **Our judgement therefore is that there is**

⁴ Data was extracted from Companies House's database, on 21 May 2020, listing company and shareholder details where the shareholder name and/or the class of share contained the word warrant and/or bearer.

100% compliance with the regulations.

13. The principal risk, and unintended consequence, of the policy to ban bearer shares was that the company and the bearer shares would move to other jurisdictions. However, there has been a concerted international push to eliminate bearer shares. Figure 1 shows the number of jurisdictions over time that have introduced measures to abolish or immobilise⁵ the use of bearer shares. More and more jurisdictions have introduced measures to remove these instruments which facilitate poor corporate behaviour, which helps reduce the risk of unintended consequences.

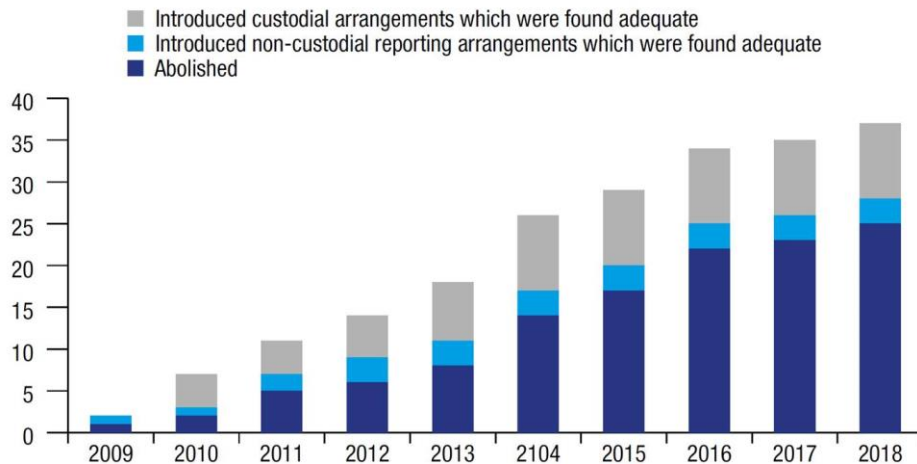


Figure 1: Abolition and Immobilisation of Bearer Shares (cumulative). OECD Report: Tax Transparency 2018 Report on Progress.

14. Overall, the OECD report that 90% of jurisdictions do not permit bearer shares or allow the identification of bearer share owners⁶ thus greatly limiting the scope for unintended consequences.
15. By ending the use of bearer shares the Government has removed a mechanism commonly used to facilitate crime and money laundering. The benefits to society from a reduction in crime are hard to monetise due to the way in which law enforcement agencies record their case data. However, abolishing bearer shares is likely to reduce the cost of investigations for law enforcement agencies.
16. Another proxy for the impact of bearer shares abolition is the increase in tax revenues caused by the measure. UK specific figures on taxes raised are unavailable. However, the OECD estimates that tax revenues increased by €93 billion following the global implementation of transparency measures (which included the abolition of bearer shares)⁷.
17. Therefore, based on this evidence, **we have concluded that the regulation is being complied with and is achieving its intended objectives.**

⁵ Some jurisdictions opted for the immobilisation of bearer shares. This occurs where the share is deposited with an authorised custodian who can provide information on the beneficial ownership to authorities if required.

⁶ Op cit, page 15

⁷ Op cit.

Could the objectives be achieved through less onerous regulatory provisions?

18. The Impact Assessment outlined the possible options for the policy objectives:

- Option 0: 'Do Nothing'. This was not favoured as it continued the use of bearer shares by UK companies. This would have continued the risks of tax evasion and money laundering and would not have been in line with international standards.
- Option 1: 'The abolition of bearer shares'. This option was preferred as it was assessed to be the most effective means of preventing the possible misuse of bearer shares. It was assessed that the potential use of bearer shares for lawful purposes did not outweigh the benefits of entirely preventing the potential for misuse.
- Option 2: 'Mandatory custodian arrangements', which were equivalent to immobilising bearer shares by requiring the shares to be lodged at a bank and where ownership records could be inspected by the authorities. This was not preferred as it led to more significant ongoing recurrent costs for business which made this option more burdensome.

A non-regulatory approach was also considered. However, the option was not favoured as it was assessed that a voluntary measure would not have been as effective as a mandatory approach. Those who we would want to comply would not volunteer to do so. It would not therefore have been able to meet the objective of reducing opportunities for crime made possible by the opacity of corporate ownership at the time.

19. The IA estimated that the present value of the cost of the preferred option (abolition) over 10 years as £1.2 million with and EANDCB of 0.12m. The IA considered that five main costs to business or government would arise from the regulations:

- Transfer costs to individuals/ businesses who own bearer shares
- Familiarisation costs to individuals/ businesses who own bearer shares
- Familiarisation, administrative and communication costs for businesses who issue bearer shares
- Financing costs for business
- Communication costs for government

20. The costs in the original IA are set out in Table 1 below:

Table 1: one off costs of the preferred option

Cost element	Cost (2013 prices)
Transition costs to bearer shareholders	£87,000
Transition costs to bearer share issuers	£23,000
Bearer shareholder identification and share conversion costs	£41,000
Share conversion costs to bearer share issuing companies	£840,000
Communication costs	£176,000
Government implementation and publicising costs	£41,000

21. Given the low cost of this measure it was not considered either feasible or proportionate to do follow on survey work to validate the costs set out in the IA. However, the largest element of the costs in the IA arose from 3000 shareholders converting shares at £280 each, giving a total of £840,000 (2013 prices). Share conversions in 2020 were advertised at costing at least £300 per transaction suggesting that costs are broadly in line with those set out in the IA⁸.

Small and Medium sized Business Assessment (SaMBA)

22. The IA estimated, based on Companies House data, that 960 out of 1233 companies that filed bearer shares were small. The IA also concluded that small companies were often used as a vehicle for crime and were therefore a legitimate target for the policy. For this reason, the IA did not recommend exemption for SMEs. The selected policy option was however the least burdensome in that it avoided ongoing compliance costs. Given the policy aim and the need to avoid further channelling illicit activity through smaller companies, this review considers that the measure was proportionate for smaller businesses.

Conclusion and Recommendations

23. **Our conclusion is that the regulations have achieved their original objectives and it is recommended that the regulations are maintained in their current form:**
- a. The measure is being complied with,
 - b. The measure has improved corporate transparency or at the very least eliminated a mechanism that reduced corporate transparency,
 - c. That international action has minimised the scope for unintended consequences, and,
 - d. The expected costs of the measure when introduced seems to have been a realistic estimate. And the measure does not impose any recurrent costs.

⁸ <https://www.companylawclub.co.uk/abolition-of-bearer-shares>