

CBI COMMENTS ON REGULATORY IMPACT ASSESSMENT

1. It is important that any procedures pass the tests as set out by the Chancellor Gordon Brown in his announcement on 24 May regarding a new risk-based approach to regulation. The Chancellor specifically stated that under the new risk-based approach there would be no unjustifiable inspections, form filling or requirement for information, thus moving the Government "a million miles away from the old belief that business unregulated will invariably act irresponsibly". The May provisions would clearly have fallen foul of this objective and even the December forms create additional burdens.

Replacement of the Concept of Affiliates

2. Making of a general declaration about Controlled Companies rather than Affiliates as originally defined has had the affect of reducing the burden on Applicants. However, the Applicant will still need to ensure that he has genuine knowledge and belief about a potentially large number of Controlled Companies if the applicant is part of a large multi-national group of companies. Consequently, the burden remains high, but has been reduced to an acceptable level.
3. Under the May provisions, the use of the defined term Affiliates meant that significant numbers of companies not under the control of the Applicant would be included in the definition, placing an unacceptably onerous burden on Applicants who would have had to use every effort to obtain information from companies over whom they had no control. (It is questionable whether the Applicant would have had the right to such information).

Details of Agents

4. Whilst details of Agents (if engaged) are held by exporters, providing such details to ECGD places a burden on Applicants. Applicants would need to confirm that there are no restrictions in contracts which would prevent giving such information to ECGD. Applicants would also need to ensure that ECGD would maintain confidentiality of this highly sensitive information.
5. The advent of the Freedom of Information Act ("FOIA") has resulted in a further regulatory impact if information about Agents is held by ECGD. It is possible that a third party would make a request under FOIA for disclosure of information about Agents. This would place a burden on ECGD who would need to (1) determine whether it holds such information, (2) whether the information is subject to any confidentiality provisions, (3) whether there is an overriding public interest for such information to be released into the public domain, and (4) whether the exporters have any valid objection to such a course of action. There is a further burden on exporters in considering whether confidential information can or should be disclosed in response to a FOIA request. Such requests place a burden on both ECGD and industry that can be mitigated if information is not held by ECGD.

Audit Provisions

6. The amended audit provisions do not place any additional burden on exporters. Whilst the revised provisions do not reduce the impact of the changes on exporters for each audit, they potentially reduce the number of unnecessary audits that are conducted by or on behalf of ECGD.

Employees / Directors

7. The removal of employees from the scope of the general anti-bribery declaration made by Applicants significantly reduces the burden on Applicants. The revised declaration removes the need to make declarations about employees who do not have any connection with the Supply Contract, and who therefore have minimal opportunity to taint the contract through Corrupt Activity. Since declarations are still made about employees who are concerned with the Supply Contract, the amended declaration should not materially affect ECGD's confidence that the contract is not tainted by bribery.