

These notes refer to the Small Business, Enterprise and Employment Act 2015 (c.26) which received Royal Assent on 26 March 2015

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: COMPANIES: TRANSPARENCY

Register of people with significant control

Schedule 3: Register of people with significant control

Part 1: Duty to obtain information and keep register

Part 21A: Information about people with significant control

Chapter 1: Introduction

790A: Overview

388. Section 790A outlines the content of Part 21A in order to assist readers' navigation of the provisions.

790B: Companies to which this Part applies

389. Section 790B sets out the companies to which Part 21A applies.

390. Subsection (1) (a) provides that the Part does not apply to companies which are DTR5 issuers. This is because such companies already make information about major shareholders public and, in view of the general regulatory provisions to which they are subject, are thought to be lower risk generally of being used for criminal purposes.

391. 'DTR5 issuer' is defined in subsection (3) and refers to companies required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules sourcebook ('DTR rules'), or those provisions as amended or replaced. These are companies who have shares admitted to trading on UK regulated or prescribed markets, for example the Main Market of the London Stock Exchange. Chapter 5 sets out the vote holder and issuer notification rules that apply when major shareholdings are bought and sold. These notifications are publicly available.

392. Subsection (1) (b) provides that the Secretary of State may by regulations exempt other types of company. In making regulations the Secretary of State must have considered whether those companies are subject to disclosure rules broadly similar to those that apply to DTR5 issuers (subsection (2)). Regulations might, for example, exempt UK companies listed on overseas markets with comparable disclosure and transparency rules.

790C: Key terms

393. Section 790C defines key terms used in Part 21A.
394. Subsections (2) to (3) provide that an individual meeting one or more of the specified conditions, as set out in Part 1 of Schedule 1A (“the specified conditions”), is a person with significant control (PSC) over the company.
395. Section 790C also sets out the circumstances in which a legal entity rather than an individual may be noted in the PSC register. Such entities are called “relevant legal entities” (RLEs) (subsection (6)). An RLE is a legal entity that would have been a PSC had it been an individual and which is subject to its own disclosure requirements. These disclosure requirements are set out in subsection (7).
396. The effect of provisions in respect of RLEs is that if, for example, company A is owned by company B and company B maintains a PSC register under Part 21A, a person (P) with significant control over both B and A as a result of the same shareholding (held through B) need not be registered as a PSC in relation to A, provided that P has no other interest in the company through any other means. Instead, by virtue of section 790M(5), B will be noted in A’s PSC register as an RLE. Those looking at A’s register will be able to then look to B’s register to identify P. This aims to avoid, where appropriate ownership disclosure arrangements are already in place, duplicative reporting.
397. Individuals with significant control over a company and RLEs are either registrable or non-registrable (subsections (4) and (8)). The term refers to whether or not the individual or RLE’s details must be entered or noted in the company’s PSC register (see section 790M).
398. An individual or RLE is non-registrable if they have significant control over the company by having significant control through one or more RLEs and no other interest in the company. Subsections (2) and (3) and Schedule 1A determine whether an individual or an RLE holds an interest in a company, holds that interest through another legal entity or has significant control over that legal entity (subsection (9)).
399. If an individual or RLE is not non-registrable, it is registrable.
400. The register that a company is required to keep in relation to its PSCs under section 790M is referred to in this Part as the company’s “PSC register” (subsection (10)).
401. Subsection (12) provides that some entities are to be treated as if they were individuals (i.e. registrable or non-registrable persons) for the purpose of Part 21A. These are corporations soles, governments and government departments, international organisations (provided its members include two or more countries, territories or governments), and local authorities and local government bodies. Although these entities are not subject to the disclosure rules set out in subsection (7), they cannot practically or usefully be ‘looked through’ to identify an individual or individuals who meet the specified conditions. This means that unless express provision is made, there will be no entry on the PSC register in such cases. This could be misleading or unhelpful for users of the PSC register. For this reason these entities are treated as individuals for the purpose of this Part, whether or not they are legal persons. Regulations may be made to modify the application of Part 21A in respect of such entities.