

EXPLANATORY MEMORANDUM TO
THE INFORMATION ABOUT PEOPLE WITH SIGNIFICANT CONTROL
(AMENDMENT) REGULATIONS 2017

2017 No. 693

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations implement aspects of Article 30 (requiring a central register of beneficial ownership information for corporate and other legal entities) of Council Directive 2015/849/EU (“the Directive”) on the prevention of money laundering and terrorist financing, in relation to companies, including unregistered companies, and Limited Liability Partnerships (“LLPs”).
- 2.2 These Regulations make minor changes to and extend the scope of Part 21A of the Companies Act 2006 (the “Act”), which requires companies to keep a register of people with significant control over the company (a “PSC register”), its application to LLPs, and the Register of People with Significant Control Regulations 2016, to bring the UK’s domestic regime into compliance with the Directive’s requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The convention that an instrument should not be laid fewer than 21 days before it comes into force is not being followed, in order to meet the deadline for transposition of 26 June 2017. The instrument was not laid before the dissolution of Parliament on 3rd May, and could not then be laid until after the General Election. If infringed for late implementation, the UK would risk significant daily fines.
- 3.2 These measures are being made using the power in section 2(2) of the European Communities Act 1972 and the negative resolution procedure. For some of the changes to secondary legislation an alternative power was available, requiring the affirmative resolution procedure. It was decided on proportionality grounds to use the general power and the negative procedure, as the amendments for which the alternative power was available are minor in scale and substance, in relation both to the regulations they amend and to the other changes in this instrument. Further, as the first exercise of the specific powers was subject to the enhanced scrutiny of the affirmative procedure on the making of the secondary legislation in 2016, to which this instrument makes only minor amendment as mandated by the Directive, it was considered that there would be no significant scrutiny deficit in the making of those amendments using the negative procedure. In the circumstances, the outcome has been that this instrument incorporates definitions from the Money Laundering,

Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (“the MLR”), being made by HM Treasury to implement the remainder of the Directive, forming a coherent and consistent cross-departmental implementation package for the Directive as a whole.

- 3.3 The Regulations also make minor corrections to rectify errors (regulations 24(3)(a) and (b)) and omissions (regulations 24(3)(c), 27 and 37(a)) in the existing national measures. The Department has decided not to apply the free issue procedure. The Department consulted with the Registrar who confirmed the ultimate decision was one for the Department, but recommended consideration be given to the following factors - that there is a mix of new and correcting provisions aimed at the same audience did not necessarily justify non-application of the procedure; that this audience should not be disadvantaged by having to pay for those corrections; and that there was a strong argument for applying the procedure on grounds of transparency. The main purpose of these Regulations is to implement the Directive by amending current national measures; the corrections constitute just over 3% of the Regulation. These corrections are minor technical and consequential amendments to reflect an intended parity of treatment in these areas between companies, LLPs and SEs. Because the audience subject to the existing national measures will also be subject to the main purpose of these Regulations, the correcting provisions will bring no extra cost. The Department considers that this paragraph, included in accordance with paragraph 3.4.13 of Statutory Instrument Practice, provides the necessary transparency and also notes that the Explanatory Note highlights these corrections.

Other matters of interest to the House of Commons

- 3.4 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Regulations modify the existing national measures to complete the UK’s transposition of Article 30 of the Directive in relation to the legal entities covered (companies, LLPs and SEs) and extend the amended measures to Unregistered Companies and listed companies on UK secondary markets, such as the Alternative Investment Market (AIM) and NEX Exchange. The transposition deadline is 26 June 2017.
- 4.2 The regulations amend the following:
- the Companies Act 2006
 - the Register of People with Significant Control Regulations 2016
 - the Limited Liability Partnerships (Application of Companies Act 2006) Regulations 2009
 - the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016
 - the Unregistered Companies Regulations 2009
- 4.3 A separate instrument, the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694), provides for the transposition of Article 30

in relation to limited partnerships governed by the law of Scotland and to specified general partnerships governed by the law of Scotland.

- 4.4 HM Treasury have overall responsibility for the transposition of the Directive, and make the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692). A transposition note setting out how the Directive will be transposed into UK law is available from the Sanctions and Illicit Finance Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

5. Extent and Territorial Application

- 5.1 This instrument applies to all of the United Kingdom.
- 5.2 The UK Government is responsible for company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the Act and associated legislation on companies and partnerships should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under-Secretary of State for the Department of Business, Energy and Industrial Strategy, Margot James, has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of The Information about People with Significant Control (Amendment) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The Directive aims to prevent abuse of the financial system for the purposes of money laundering or terrorist financing. It incorporates a number of measures. These regulations address a specific measure in Article 30 of the Directive which requires Member States to have a central register of beneficial owners of corporate entities incorporated in their territory.
- 7.2 The UK already meets this obligation through Part 21A of the Companies Act 2006 which creates obligations on companies, SEs and LLPs to hold information on people with significant influence or control over them. These regulations extend the scope of the provisions to forms of company not previously in scope of the PSC register.
- 7.3 Member States must ensure the information is “adequate, accurate and current” and meet certain obligations regarding access to the information by third parties. These regulations therefore amend the frequency with which companies, SEs and LLPs are required to notify the registrar of companies of changes to their register, and amend the duties on the registrar on releasing protected information.
- 7.4 The justifications for these provisions in the Directive are similar to those that underpin our domestic measures. A lack of transparency over the ultimate ownership and control of corporates can facilitate illicit activity and lead to poor corporate behaviour which erodes trust and damages the business environment. The overarching policy objective of the Directive is to combat money laundering and terrorist financing. These measures will also improve the business environment to facilitate economic growth through enhanced corporate transparency.

- 7.5 Benefits to society of the policy are anticipated to arise from a reduction in crime and reduced costs to law enforcement agencies, which will have easier access to information on corporates across the EU. This is as a result of the deterrent effect of having to comply with the requirements, and information on the register providing improved detection, greater efficacy of investigations and outcomes where corporate entities are being used to facilitate serious criminal activity including across borders. Benefits to business are anticipated to accrue as a result of their operation in a more open and trusted business environment.
- 7.6 Under current domestic measures, most UK incorporated companies, LLPs and SEs have been required to hold a PSC register from 6 April 2016 and to send the information to the registrar of companies with their confirmation statement or on incorporation, from 30 June 2016 onwards. From 26 June 2017, the date by which the UK is required to transpose the Directive, companies will be obliged to record changes to information on their PSC register within 14 days of obtaining the information and to file that information with the registrar within a further 14 days.
- 7.7 In respect of Unregistered Companies and listed companies on secondary markets, which are coming into scope of these arrangements for the first time, the regulations provide for a four week transitional period ending on 24 July 2017, after which these newly in scope companies will be subject to the same obligations to obtain and file information on people with significant influence or control over them (“PSCs”). During the transitional period, such companies should investigate their ownership and anyone who would appear as a PSC on their register may apply to the registrar for their information to be protected. Protected information is not recorded on the publically available central register at Companies House and may only be disclosed by the registrar of company in certain circumstances and to specific bodies.

Consolidation

- 7.8 BEIS has no plans to consolidate this legislation.

8. Consultation outcome

- 8.1 There was a public consultation on proposals for overall transposition of the Directive issued by HMT¹ in September 2016, and a separate public discussion paper published in November 2016 by BEIS² on the approach to transposition of Article 30 for comment.
- 8.2 Seventy-six responses relevant to Article 30 were received, primarily from a wide range of representative organisations. The responses were mostly supportive of the outlined approach and were used to inform the extent and expanded scope of the regulations as well as the minor and technical changes to frequency of updating and access to information.
- 8.3 Stakeholder views were also gathered through a number of focus group events during the consultations as well as via a working group previously established to develop guidance on the PSC register requirements. In addition, surveys of companies, law

¹ Overall transposition consultation: <https://www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive>.

² BEIS Paper Approach to Article 30 transposition: <https://www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register>

enforcement, credit reference agencies, NGOs and company service providers were conducted to inform the Impact Assessment that covers these regulations.

9. Guidance

- 9.1 Detailed non-statutory guidance for companies and PSCs on the PSC register requirements has been updated to reflect the changes in these regulations and is available on the gov.uk website.

10. Impact

- 10.1 The estimated equivalent annual net cost to business of the amendments to PSC register measures introduced in 2016 is £39.0m. The new measures impact some 3.6m companies (including LLPs and SEs) currently in scope of the register and bring a further 840 companies in scope. The average cost per company estimated to be £56 and ongoing costs of £25 pa.
- 10.2 The cost to Companies House of implementing the UK's PSC regime in 2016 was estimated to be £92.4k in one off IT and communications costs staff costs of £225k per year. The costs arising from the changes in these regulations discussed in the impact assessment will be considerably smaller. We therefore do not expect that there will be any meaningful change to the final cost through increased costs to the registrar of companies in administering the register.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses. There is no scope to vary requirements according to size of business in the Directive.

12. Monitoring and review

- 12.1 No review provision is included in these Regulations.
- 12.2 By virtue of amending and updating Part 21 A of the Act, these regulations are in scope of the report that the Secretary of State must publish about the operation of Part 21A of the Act under section 82 of the Small Business, Enterprise and Employment Act 2015. It is anticipated that the first report will be published in 2019.
- 12.3 Subsequent reports about these matters are to be published at intervals not exceeding five years.

13. Contact

- 13.1 Stephen Webster at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 3767 or email: Stephen.Webster@beis.gov.uk can answer any queries regarding the instrument.