EXPLANATORY MEMORANDUM TO

THE COMPANIES ACT 2006 (AMENDMENT OF PART 21A) REGULATIONS 2016

2016 No. 136

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To make minor amendment to section 790C of Part 21A of the Companies Act 2006 ("the Act") as inserted by the Small Business, Enterprise and Employment Act 2015. The amendment removes the unnecessary requirement to record every company in a chain of companies on a company's register of people with significant control over the company.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 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 Part 21A of the Act, as inserted by Part 7 of the Small Business, Enterprise and Employment (SBEE) Act 2015 with effect from 6 April 2016, will require UK registered companies to keep a register of their people with significant control ("PSCs").

4.2 This will be one of the registers that companies are required to keep under the Act, alongside others, including the register of members and directors (sections 113 and 162 of the Act respectively). Together these registers will provide publicly available information on the management, ownership and control arrangements of the company.

4.3 Part 21A of the Act sets up the framework for the register, which companies will be required to hold from 6 April 2016. From 30 June 2016 onwards they will need to send the information to the Registrar of Companies with their confirmation statement (which replaces the annual return) or on incorporation. The Registrar will maintain the PSC information in a central public register.

4.4 This instrument makes two minor amendments in section 790C of the Act to the definitions of "registrable person" (section 790C(4)) and "registrable relevant legal entity" (790C(8)) in connection with the PSC register.

4.5 The power for this instrument is in section 2(2)(b) European Communities Act 1972 *"for the purpose of dealing with matters arising out of or related to"* obligations in

Article 30 of the Fourth Anti-Money Laundering Directive 2015/849 (EU)("the Directive"). Article 30 of the Directive requires Member States to ensure that *"corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held"*.

4.6 The PSC regime will provide the basis for the UK's implementation of Article 30 of the Directive from the implementation date of 27 June 2017, subject to any further modification required to complete the implementation. A company's PSC may be regarded, for that purpose, as equivalent to its beneficial owner.

4.7 This amendment will simplify companies' registration obligations under the PSC regime, from its commencement, in order to remove an inadvertent over-implementation of Article 30 of the Directive, by which companies in a chain of legal ownership were required to obtain and hold not only *"information on their beneficial ownership"* but also information about intermediate companies in the legal ownership chain, in addition to their beneficial owners.

5. Extent and Territorial Application

5.1 The instrument amends section 790C in Part 21A of the Act, and, in common with Part 21A, it extends to the United Kingdom.

5.2 The territorial application of this instrument is to the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for the Department of Business, Innovation and Skills and Minister for Intellectual Property, Baroness Neville-Rolfe, has made the following statement regarding Human Rights:

"In my view the provisions of The Companies Act 2006 (Amendment of Part 21A) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The Small Business Enterprise and Employment Act 2015 inserted Part 21A into the Act. Part 21A of the Act sets out the framework for the PSC register.

7.2 This instrument amends section 790C of the Companies Act 2006 to remove an unnecessary requirement to record all the companies and the people with significant control in a company's ownership or control chain, if there is a company in the chain which not a relevant legal entity. This makes the requirements consistent with the situation when all the companies in the ownership chain are registrable.

8. Consultation outcome

8.1 Consultation on a draft of the main PSC regulations, which set out the detail of the PSC register requirements, ran from 19 June to 17 July 2015 and received 44 responses. The responses broadly supported the approach taken in the draft regulations, with comments leading to additional refinement of the regulations. The inconsistency that this instrument will resolve was highlighted by stakeholders during that consultation.

8.2 The minor amendments contained within this instrument have not been specifically consulted on, predominantly because the 2015 consultation represented the legislation as having the effect that will be achieved by this instrument.

9. Guidance

9.1 Guidance on the PSC regime as modified by this instrument will be published on www.gov.uk. There will be 3 guidance documents:

- Summary Guidance - to enable companies to familiarise themselves with the register's requirements;
- Guidance for Companies –in-depth guidance on what companies need to do to comply with the regime;
- Guidance for PSCs - in-depth guidance on what people with significant control need to do to comply with the regime;

9.2 Additionally, statutory guidance on the meaning of *significant influence or control* for the purposes of the PSC register has been laid in Parliament.

10. Impact

10.1 The impact on business, charities or voluntary bodies of this amendment has not been estimated in isolation, but was included within the cost estimates within the enactment stage impact assessment for the people with significant control register. The full costs of the register of people with significant control policy has an estimated annual net cost to business of £85.9m per annum.

10.2 The impact on the public sector of this amendment has not been estimated in isolation but was included within the cost estimates of the enactment stage impact assessment. The total net present value of the monetised costs to the public sector is £1.8m per annum.

10.3 A separate Impact Assessment has not been prepared for this instrument, which is deregulatory in its effect.

10.4 The costs and benefits of the register as a whole are set out in the Transparency and Trust: enhanced transparency of company beneficial ownership enactment impact assessment which can be found here:

www.gov.uk/government/consultations/company-ownership-and-control-register-implementation

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.

12. Monitoring & review

12.1 The Government intends to assess the effectiveness of the regulations by 2019 as part of its obligation to review of the register of people with significant control provisions under Part 21A of the Companies Act 2015.

13. Contact

13.1 Andrew Death at the Department of Business, Innovation and Skills. Telephone: 0207 215 3807 or email: andrew.death@bis.gsi.gov.uk can answer any queries regarding the instrument.