EXPLANATORY MEMORANDUM TO

THE COMPANIES AND LIMITED LIABILITY PARTNERSHIPS (PROTECTION AND DISCLOSURE OF INFORMATION AND CONSEQUENTIAL AMENDMENTS) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Justin Madders, Parliamentary Under Secretary of State at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

2.2 Nis Bandara, Deputy Director for Company Law and Transparency at the Department for Business and Trade, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Trevor Smith at the Department for Business and Trade
Telephone: 07917955883 or email: trevor.smith@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Having personal information on the public companies register can put individuals at increased risk of fraud and other harms. This instrument will widen the range of circumstances in which individuals may apply to the registrar to protect their usual residential address ("URA") – i.e. the home address where an individual usually lives – where it appears on the companies register.

4.2 Currently, a URA can be protected in a limited range of circumstances, as set out under regulation 9(1) of the Companies (Disclosure of Address) Regulations 2009. Individuals can apply to protect their URA where it was placed on the register under certain provisions in the individual's capacity as, among other things, a director, member, or person with significant control of a company. However, individuals cannot currently apply to protect their URA where it is currently or was formerly used as a company's registered office address ("ROA") (i.e. the official correspondence address of the company).

4.3 Going forward, this instrument will mean that an individual can also apply to protect a URA where it was previously used as a company's ROA. (Individuals will still not be able to apply to protect a URA that is a company's current ROA, to ensure that companies have a visible ROA on the register.) This change will more robustly protect such individuals on the register.

4.4 However, the instrument will allow the registrar to disclose a protected address that was used as a ROA by a dissolved company at the point of its dissolution to a person who is permitted under section 1029 of the Companies Act 2006 to apply to the court to restore a dissolved company to the register. Such persons need the protected address in order to complete a court form needed in a restoration application.

4.5 In addition, this instrument makes some amendments to company law provisions as applied to limited liability partnerships ("LLPs"), including to apply the new provisions relating to protection of URAs to LLPs with modifications. The amended provisions relate to addresses kept by the registrar and protection or disclosure of different protected information she holds. The instrument also makes some amendments to company law as applied to LLPs that are consequential on the reform of certain company law provisions by the Economic Crime and Corporate Transparency Act 2023 ("the 2023 Act"). These amendments will ensure the framework for LLPs keeps in step with that for companies.

Where does the legislation extend to, and apply?

4.6 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is the whole of the United Kingdom.

4.7 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the whole of the United Kingdom.

5. Policy Context

What is being done and why?

5.1 Following the Corporate Transparency and Register Reform White Paper published in February 2022, the recently enacted 2023 Act reformed the role and powers of the registrar (whose functions are carried out by Companies House). These reforms include measures to prevent abuse of personal information on the companies register.

5.2 It has always been a key principle that individuals directing companies and equivalent entities should have their details registered at Companies House so that they can be held to account for the company's affairs. However, there are instances in which having this information visible on the public register puts individuals at increased risk of harm.

5.3 This instrument introduces the first part of the 2023 Act's privacy reforms, bringing in further measures to protect personal address information on the public companies register. The instrument expands the previous URA protection regime, enabling the protection of URAs where they appear on the register in some cases where protection was previously not possible.

5.4 These regulations allow an individual to apply to protect their URA which was formerly a ROA placed on the companies register under section 9(5)(a), section 87, or section 854 by virtue of being information required by section 855(1)(a) of the Companies Act 2006 and equivalent sections under the Companies Act 1985 and the Companies (Northern Ireland) Order 1986. This means that individuals can apply to protect their URA which was formerly a ROA where it appears on certain documents filed with Companies House, namely on a statement of the intended address of the company's registered office, a notice of a change of ROA, and annual returns.

5.5 Anyone will be able to make an application according to the Regulations for protection of their URA, as long as this URA was formerly a company's ROA, and placed on the companies register under the provisions listed in the Regulations.

Individuals will not need to justify the need for such protection or meet any additional conditions.

5.6 The instrument also allows the registrar to disclose a protected address that was used as a ROA by a dissolved company at the point of dissolution to persons listed under section 1029(2) of the Companies Act 2006. These are the persons eligible to apply to court to restore a dissolved company to the register, such as former creditors and persons with a potential legal claim against the company. This provision is included in the instrument so as not to frustrate restoration proceedings, as the court form for restoration applications requires the dissolved company's ROA.

5.7 The instrument allows a person to apply to protect their URA where it was used as a ROA by a dissolved company at the point of dissolution, provided the company has been dissolved for more than six months. This provision is also included in the instrument so as not to frustrate restoration proceedings.

What was the previous policy, how is this different?

5.8 Previously, it was not possible to protect a URA if it was formerly used as a ROA.

5.9 Companies House has for a long time been inundated with requests for this kind of protection, as the previous law prevented many people from protecting publicly available address information that put them at risk, for example in cases of domestic abuse.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument is part of a series of Statutory Instruments to be made following the 2023 Act, implementing the reforms within it.

6.2 It extends the existing address protection regime laid out in the Companies (Disclosure of Address) Regulations 2009 (S.I. 2009/214).

6.3 It also makes corresponding provisions for LLPs as well as minor consequential changes by amending the Limited Liability Partnership (Application of Companies Act 2006) Regulations 2009 (S.I. 2009/1804).

6.4 This instrument also amends the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 (S.I. 2016/339), in consequence to changes made to company law under the 2023 Act, for example to remove references to the defunct category of "specified public authorities" (the 2023 Act established a wider power for the registrar to disclose information to any public authority for purposes connected to its functions).

6.5 Further regulations will be made in due course to introduce additional measures preventing the abuse of personal information on the companies register.

Why was this approach taken to change the law?

6.6 This approach provides the simplest and most appropriate method of making the necessary changes. Amending the Companies (Disclosure of Address) Regulations 2009 ensures that all provisions relating to the protection of usual residential addresses are in one place.

7. Consultation

Summary of consultation outcome and methodology

7.1 In 2019, the Government consulted on a range of options to enhance the role of Companies House and increase the transparency of companies and other legal entities. The consultation received 1,320 responses, and respondents broadly supported the proposals. The proposed measures to protect personal information on the register were strongly supported. A copy of the consultation and Government response can be found here: https://www.gov.uk/government/consultations/corporate-transparency-and-register-reform.

7.2 The initial consultation was followed by three further consultations. These focused on: the powers of the registrar, improving the quality and value of financial information on the UK companies register, and implementing the ban on corporate directors. These three consultations opened in December 2020 and closed in February 2021. Respondents were broadly supportive of all the measures proposed.

7.3 A copy of the latter three consultations, a summary of the responses, and the Government's position on reforming Companies House as a whole can be found in the Corporate Transparency and Register Reform White Paper: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1060726/corporate-transparency-white-paper.pdf.

7.4 The Government has also engaged with Devolved Governments on matters which fall within areas of devolved competence. All devolved issues have been settled. Legislative consent has been obtained from Welsh and Scottish Governments. As legislative consent from Northern Ireland could not be obtained at the time of passage of the 2023 Act because an Executive had not yet been formed, the Government legislated without consent.

8. Applicable Guidance

8.1 Companies House already has guidance on protecting personal information on the companies register[1]. Ahead of the regulations coming into force, the guidance will be updated to reflect the changes made by this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the measures within this instrument will not cause any cost to business. This is outlined in the Impact Assessment for the primary legislation, which is available here: https://publications.parliament.uk/pa/bills/cbill/58-03/0154/1.ImpactAssessmentfromDepartmentforBusinessEnergyandIndustrialStrategy.pdf.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies, as individuals would only ask for their URA to be protected if the benefits of the action were greater than the cost.

9.3 The legislation does not impact small or micro businesses.

[1] https://www.gov.uk/guidance/your-personal-information-on-the-public-record-at-companies-house

9.4 There is no, or no significant, impact on the public sector because this instrument will form a part of the existing address protection regime – i.e. it will widen the range of circumstances in which individuals can apply to protect their URA. The impact on Companies House to deliver the full register reform package is outlined in the Impact Assessment for the primary legislation.

9.5 No impact on the environment is expected as a result of this instrument.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is that the Department for Business and Trade and Companies House will monitor all the reforms to Companies House enabled through the 2023 Act and will periodically publish research on their impact.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Justin Madders, Parliamentary Under Secretary of State, Department for Business and Trade, has made the following statement:

"A statutory review clause is not included in the instrument since the additional requirements are not extensive and are considered to meet the Government's 'de minimis' regulatory impact criteria, meaning no impact assessment is required."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Justin Madders, Parliamentary Under Secretary of State, Department for Business and Trade, has made the following statement regarding Human Rights:

"In my view the provisions of the Companies and Limited Liability Partnerships (Protection and Disclosure of Information and Consequential Amendments) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").