EXPLANATORY MEMORANDUM TO

THE LIMITED LIABILITY PARTNERSHIPS (REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL) REGULATIONS 2016

2016 No. XXXX

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 These Regulations apply to Limited Liability Partnerships ("LLPs") with modifications Part 21A of and Schedules 1A and 1B to the Companies Act 2006 (c.46) (the "Companies Act") together with the Register of People with Significant Control Regulations 2016 (the "Company PSC Regulations").

2.2 These Regulations require LLPs to keep a register of people with significant control over the LLP (a "PSC register").

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 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and includes Northern Ireland.

4. Legislative Context

4.1 Part 21A of the Companies Act, as inserted by section 81 of the Small Business, Enterprise and Employment Act 2015 (c.26), requires UK registered companies to keep PSC registers.

4.2 These Regulations are made under the powers contained in sections 15 and 17 of the Limited Liability Partnership Act 2000 (c.12) (the "LLP Act") and apply Part 21A of and Schedules 1A and 1B to the Companies Act to LLPs by amending the Limited Liability Partnerships (Application of Companies Act) Regulations 2009 (S.I. 2009/1804) (the "2009 Regulations").

4.3 It is intended that these Regulations will be laid before Parliament at the same time as the Company PSC Regulations, the provisions of which are applied to LLPs with modifications by Schedule 2 to these Regulations.

4.4 Schedule 3 to these regulations makes minor and consequential amendments to the LLP Act, the 2009 Regulations, and the Companies (Disclosure of Address) Regulations 2009.

5. Extent and Territorial Application

5.1 This instrument extends to all of the United Kingdom.

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

5.3 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 LLPs and companies 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, Innovation and Skills and Minister for Intellectual Property, Baroness Neville-Rolfe, has made the following statement regarding Human Rights:

6.2 In my view the provisions of The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

7.1 At the UK-chaired G8 Summit in 2013, the G8 Leaders recognised the problem of corporate opacity. They agreed common Principles[1] to tackle the misuse of companies and legal arrangements and to publish National Action Plans setting out the concrete steps they would take to implement them. Central to the Principles was that corporate entities, including companies and LLPs, should obtain and hold information on their beneficial ownership (i.e. on the individuals who ultimately own and control the company or LLP), and that this information should be accessible onshore to relevant authorities. The UK has committed to do this by creating a publicly accessible central registry of company and LLP beneficial ownership information, to be maintained by the registrar of companies – the PSC register.

7.2 Corporate opacity can facilitate illicit activity and lead to poor corporate behaviour which erodes trust and damages the business environment. The overarching policy objective of the register is to reduce crime and improve the business environment to facilitate economic growth, through enhanced corporate transparency.

7.3 Benefits to society of the policy are anticipated to arise from a reduction in crime and reduced costs to law enforcement agencies. 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 companies or LLPs are being used to facilitate serious criminal activity. Benefits to business are anticipated to accrue as a result of their operation in a more open and trusted business environment. The anticipated wider benefits of the register have the potential to be far greater than costs to business, however it has not been possible to fully monetise them.

7.4 The PSC register will be in addition to the register of members that an LLP is required to keep under section 9 of the LLP Act. Together the register of members and the PSC

[1] G8 action plan principles to prevent the misuse of companies and legal arrangements (June 2013): https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements

register will provide publicly available information on the ownership and control arrangements of LLPs.

7.5 The objective of these Regulations is to apply the PSC register appropriately to LLPs.

Consolidation

7.6 The 2009 Regulations are being amended to add a new part (Part 8A which applies the provisions of Part 21A of the Companies Act to LLPs). On this basis the Department for Business, Innovation and Skills has no plans to provide a consolidated version. As the amendments to the LLP Act and the Companies (Disclosure of Address Regulations 2009) are not substantial, the Department does not intend to provide consolidated versions.

7.7 The Department intends to explain the amendments fully in the relevant publicly available guidance, and to make use of, as appropriate, informal documents which set out the legislation as it should be read including the additions and amendments arising from these regulations.

7.8 Two mark ups, which show the modifications made by these Regulations to the text of Part 21A of the Companies Act and the Company PSC Regulations, are submitted with this memorandum and will be published alongside it on the legislation.gov.uk website.

8. Consultation outcome

8.1 There was a public consultation on proposals for the introduction of a publicly accessible central registry of UK company beneficial ownership information between July and September 2013[2]. This explicitly sought views on whether LLPs should be in scope of the PSC regime alongside companies. The Government set out its intention to include LLPs in the PSC regime alongside companies in the Government Response of April 2014[3].

8.2 A discussion paper was issued for comment between October and December 2014, covering the way that a person's control is described on the PSC register, guidance and the protection regime[4].

8.3 An additional consultation from 19 June 2015 to 17 July 2015[5] asked for views on further aspects of the PSC regime, and included a draft of the Company PSC Regulations. The Government invited anyone with an interest in the application of the PSC regime to LLPs to make contact, to contribute their views.

8.4 On the basis of that contact, discussions of the policy propositions and draft regulations were undertaken. A wide range of important and helpful contributions were received through correspondence, bilateral meetings and calls, and two workshops over the summer of 2015. These contributions explored some features of LLPs relevant to the application of the PSC regime to them. Most contributions focussed on the differences between LLPs and companies (eg with respect to shares) which require modification to the application of the specified conditions for

[2] https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper
[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf
[4] https://www.gov.uk/government/consultations/company-ownership-and-control-discussion-paper-on-a-public-central-register
[5] https://www.gov.uk/government/consultations/company-ownership-and-control-register-implementation

significant control to LLPs. A Government response to this consultation is available on the gov.uk website[6].

8.5 More generally, stakeholder views on the PSC regime have been gathered through a number of focus group events as well as via a working group established to develop guidance on the PSC register requirements. In addition, multiple surveys of companies, law enforcement, credit reference agencies, NGOs and company service providers were conducted to help develop the protection regime and establish the correct structure and level of fee an LLP or company may charge for providing a copy of its PSC register.

9. Guidance

9.1 Once the Regulations have been approved, made and commenced, statutory guidance for LLPs on the meaning of 'significant influence or control' in the context of the PSC register will be laid before Parliament, as required by paragraph 23 of Schedule 1A to the Companies Act.

9.2 The statutory guidance will help explain the fourth and fifth specified conditions in Schedule 1A by which a person may qualify as a person with significant control over an LLP. These conditions are met if a person has the right to exercise, or actually exercises, significant influence or control over an LLP or if a person has the right to or actually exercises significant influence or control over the activities of a trust or a firm which meets another specified condition in respect of the LLP (see paragraphs 5 and 6 of Schedule 1A). The statutory guidance will also be used in determining whether somebody has an interest in an LLP (see paragraph 8 of Schedule 1A).

9.3 The approved statutory guidance will be made available on the gov.uk website.

9.4 Detailed (non-statutory) guidance for LLPs, companies and PSCs on the range of PSC register requirements will also be made available on the gov.uk website.

10. Impact

10.1 The estimated equivalent annual net cost to business of the overall PSC regime is £85.9m. These measures will impact some 3.4m companies including some 59,000 LLPs, with the average cost per company or LLP estimated to be £25 pa. Charities which are companies will be in scope of the reforms and impacted by them.

10.2 Further costs have been estimated in relation to the protection regime and the requirement for companies and LLPs to make their own PSC register publicly available (which includes the costs to companies and LLPs of providing a copy of their PSC register). These policy elements have an estimated equivalent annual net cost to business of £4.7m and £10.1m respectively.

10.3 Costs to Government will involve increased costs to the registrar of companies in setting up and administering the register. The overall monetised one-off costs to the public sector are estimated to be £92k, with ongoing costs estimated at £225k pa.

10.4 Three Impact Assessments are submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

[6] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486520/BIS-15-622-register-of-people-with-significant-control-consultation-response.pdf

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. Excluding small and micro businesses from the policy would create a significant loophole and could risk a substantial impact on the ability of the package to reduce crime, and exclude small and micro businesses from the benefits that can be derived from increased corporate transparency.

12. Monitoring and review

12.1 A review provision is included in these Regulations.

12.2 The Secretary of State must publish a report setting out the conclusions of the first review of these Regulations within the period in which the Secretary of State is required to publish a report about the operation of Part 21A of the Companies Act by section 82 of the Small Business, Enterprise and Employment Act 2015. It is anticipated that the report will be published in 2019.

12.3 Subsequent reports about these Regulations are to be published at intervals not exceeding five years.

12.4 The successful operation of Part 21A of the Companies Act will indicate whether this instrument has set up the relevant detailed aspects of the PSC register appropriately.

13. Contact

13.1 Andrew Death at the Department for Business, Innovation and Skills Telephone: 02072153807 or email: Andrew.Death@bis.gsi.gov.uk can answer any queries regarding the instrument.