EXPLANATORY MEMORANDUM TO

THE REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL REGULATIONS 2016

2016 No. 339

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 make provision to supplement the operation of Part 21A of the Companies Act 2006 (c.46) (the "Act"), which requires companies to keep a register of people with significant control over the company (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 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. These Regulations make provisions to support the operation of Part 21A, using the regulation making powers of that Part for the first time.

4.2 Companies will be required to hold a PSC register from 6 April 2016 and to send the information to the registrar of companies with their confirmation statement (which replaces the annual return) or on incorporation, from 30 June 2016 onwards. Consequently, sections 81 and 82 of and Schedule 3 to the Small Business, Enterprise and Employment Act 2015 (c.26) will be commenced on 6 April 2016. The only exceptions are sections 790M(9)(c) and 790W-790ZE which will commence on 30 June 2016 together with paragraphs 4, 5 and 7 of Schedule 3.

4.3 The requirement for companies to send PSC information with their confirmation statement is in new section 853I of the Companies Act 2006, as inserted by section 92 of the Small Business, Enterprise and Employment Act. It is intended that section 92 will be commenced on 30 June 2016. Accordingly, while the majority of these Regulations will come into force on 6th April 2016, paragraph 6 of Schedule 5 which refers to section 853I will come into force in line with section 92 on 30th June 2016.

4.4 It is intended that Part 21A of the Act and these Regulations will be applied, with modifications, by a separate affirmative instrument to limited liability partnerships ("LLPs"). It is also intended that a separate negative instrument will be made to

modify the application of the Act and these Regulations in respect of Societas Europaea ("SEs").

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 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, 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 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 companies should obtain and hold information on their beneficial ownership (i.e. on the individuals who ultimately own and control the company), 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 beneficial ownership information, 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

[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

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 other registers that companies are required to keep under the Act, such as the registers 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 companies. The objective of this instrument is to set up some detailed aspects of the PSC register.

7.5 Notably, sections 790ZF and 790ZG of the Act together with Regulations 22 to 46 set up a protection regime for individuals at serious risk of violence or intimidation as a result of their association with a company (whether as a result of the company's activities or other factors specific to the individual). The regime allows applications to be made to the registrar of companies so that the PSC's information is not publicly disclosed in order to protect that individual or a person living with the individual from violence or intimidation, without compromising the integrity of the overall PSC register.

7.6 Regulation 3 of these Regulations provides that a company is specified for the purpose of section 790B(1)(b) of the Act if it has voting shares admitted to trading on a market which is listed in Schedule 1 to the Regulations. The Annex to this Explanatory Memorandum describes the markets which are referred to in Schedule 1.

Consolidation

7.7 The Companies (Disclosure of Address) Regulations 2009 (S.I. 2009/214) are being amended to ensure consistency between the PSC protection regime and the existing protection regime for directors. The Department for Business, Innovation and Skills has no plans to provide a consolidated version at this time, but intends to explain these amendments in the relevant publicly available guidance.

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]. A discussion paper was issued for comment between October to December 2014 on the way that a person's control over a company is described on the PSC register, guidance and the protection regime[3].

8.2 A further consultation from 19 June 2015 to 17 July 2015 asked for views on a draft of these regulations[4]. Forty-four responses to this consultation, primarily from a wide range of representative organisations, were received. The responses were used to inform some minor and technical changes to the content of the regulations. Notable changes included but were not limited to: simplifying the language in regulations 9 to 17 in order to make them easier for companies to understand; setting the fee a company may charge for a copy of its own PSC register in regulation 6 to reflect the costs to companies; and increasing the length of time an individual has to cease to be a PSC during the transition period, under regulation 46 to allow for the fact that an individual may need to divest of their shares in the company in order to cease to be a

[2] https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper
[3] https://www.gov.uk/government/consultations/company-ownership-and-control-discussion-paper-on-a-public-central-register
[4] https://www.gov.uk/government/consultations/company-ownership-and-control-register-implementation

PSC. A Government response to this consultation which details the comments received and the changes made to the draft regulations is available on the gov.uk website[5].

8.3 Stakeholder views were also 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 a company may charge for providing a copy of its PSC register.

9. Guidance

9.1 Statutory guidance on the meaning of 'significant influence or control' in the context of the PSC register, as required by paragraph 24 of Schedule 1A to the Act, will also be laid before Parliament This helps to explain the fourth and fifth specified conditions in Schedule 1A to the Act by which a person may qualify as a person with significant control over a company. These conditions are met if a person has the right to exercise, or actually exercises, significant influence or control over a company 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 company (see paragraphs 5 and 6 of Schedule 1A to the Act). The statutory guidance will also be used in determining whether somebody has an interest in a company (see paragraph 8 of Schedule 1A to the Act).

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

9.3 Detailed non-statutory guidance for companies and PSCs on the PSC register requirements is available on the gov.uk website.

10. Impact

10.1 The estimated equivalent annual net cost to business of the PSC register measures in the Act is £85.9m. These measures will impact some 3.4m companies (including some 59,000 LLPs), with the average cost per company estimated to be £25 pa. Charities which are companies will be in scope of the reforms and impacted by them. Further costs have been estimated in relation to the protection regime and the requirement for companies to make their own PSC register publicly available (which includes the costs to companies 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.

10.2 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.

10.3 Three Impact Assessments are 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.

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

11.2 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 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 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.

ANNEX: SUMMARY OF MARKETS LISTED IN SCHEDULE 1

1. Israel

Tel Aviv Stock Exchange	Israel's principal stock exchange.

2. Japan

Fukuoka Stock Exchange	Regional exchange in Kyushu for small and medium sized companies.
Nagoya Stock Exchange	One of Japan's largest securities markets.
Osaka Securities Exchange	Securities exchange focused on derivative products.
Sapporo Securities Exchange	Stock exchange for venture companies.
Tokyo Stock Exchange	Japan's main stock exchange.

3. Switzerland

BX Berne Exchange	Stock exchange for small and medium sized companies.
SIX Swiss Exchange	Switzerland's main stock exchange.

4. U.S.A.[6]

BATS Exchange, Inc.	Equities market originally set up as an alternative investment exchange. BATS Y-Exchange, Inc., EDGA Exchange, Inc. and EDGX Exchange, Inc. are all operated by the BATS Exchange.
BATS Y-Exchange, Inc.	Equities market operated by the BATS Exchange.

[6] The following markets are national securities exchanges registered with the United States Securities and Exchange Commission and incorporated under the given names.

BOX Options Exchange LLC	Boston options exchange.
C2 Options Exchange, Incorporated	Options exchange operated by the Chicago Board Options Exchange.
Chicago Board Options Exchange, Incorporated	Options exchange; exclusive U.S. home for London Stock Exchange Group-owned FTSE and Russell index options.
Chicago Stock Exchange, Inc.	Regional stock exchange.
EDGA Exchange, Inc.	Exchange platform operated by the BATS Exchange.
EDGX Exchange Inc.	Second exchange platform operated by the BATS Exchange.
International Securities Exchange, LLC	Options exchange; also operates ISE Gemini LLC.
ISE Gemini LLC	Options exchange operated by the International Securities Exchange.
Miami International Securities Exchange LLC	Options exchange in the process of expanding to include a stock exchange focused on Latin American companies.
NASDAQ OMX BX, Inc.	Stock exchange formerly known as the Boston Stock Exchange, operated by NASDAQ.
NASDAQ OMX PHLX LLC	Options exchange operated by NASDAQ.
The NASDAQ Stock Market LLC	Stock Exchange; also operates NASDAQ OMX BX, Inc. and NASDAQ OMX PHLX LLC.
National Stock Exchange, Inc.	Stock exchange (formerly the Cincinnati Stock Exchange).
New York Stock Exchange LLC	U.S.A.'s main stock exchange; also operates NYSE Arca Inc. and NYSE MKT LLC.
NYSE Arca, Inc.	Stock and options exchange (formerly the Archipelago Exchange) operated by the New York Stock Exchange.
NYSE MKT LLC	Stock exchange (formerly the American Stock Exchange) for small-cap companies operated by the New York Stock Exchange.