



Department  
for Business  
Innovation & Skills

**THE REGISTER OF PEOPLE WITH  
SIGNIFICANT CONTROL (PSC  
REGISTER)**

Understanding the new  
requirements, recording control  
on the PSC register and  
protecting people at serious risk  
of harm

OCTOBER 2014

## Contents

Understanding the new requirements, recording control on the PSC register and protecting people at serious risk of harm .....	3
Foreword .....	4
Executive summary .....	5
Nature of control .....	6
Protection regime .....	6
How to respond .....	7
Confidentiality and data protection.....	7
Help with queries .....	7
Introduction.....	8
The PSC register .....	8
Purpose of this paper.....	8
Next steps .....	9
Chapter 1: Understanding the new requirements.....	10
Introduction and context .....	10
Wider guidance.....	11
Chapter 2: Recording nature of control on the PSC register .....	12
Introduction and context .....	12
Chapter 3: Protection regime.....	19
Introduction and context .....	19
Chapter 4: Costs and access.....	30
Chapter 5: Impact of proposals.....	33
Overview of questions .....	35
Annex A: Extracts from the SBEE Bill .....	37
Annex B: Schedule 1 to the Companies (Disclosure of Address) Regulations 2009 .....	39

## Understanding the new requirements, recording control on the PSC register and protecting people at serious risk of harm

The UK has committed to implement a publicly accessible central register of the individuals who ultimately own and control UK companies – the company’s beneficial owners or ‘people with significant control’. The Small Business, Enterprise and Employment Bill will implement that commitment by introducing a central register of people with significant control over UK companies (the ‘PSC register’).

This discussion paper seeks views on the guidance that will be required to help companies and others understand the new requirements. It also seeks views on two key elements needed to implement the register that will be dealt with in secondary legislation. The first is the way a PSC’s control over a company is recorded on the PSC register. The second is the way some PSC data needs to be protected from public disclosure.

Responses received will help us prepare the regulations needed to implement the PSC register.

Issued: 28 October

Respond by: 9 December

Enquiries to: Transparency and Trust, [transparencyandtrust@bis.gsi.gov.uk](mailto:transparencyandtrust@bis.gsi.gov.uk), 0207 215 6417

This discussion paper is relevant to UK companies, people with significant control over UK companies and third parties who provide services or advice to UK companies or investors.

# Foreword



Transparency of company ownership and control is important.

It matters because companies make a significant contribution to the UK economy. To maximise that potential it is vital that the UK is, and is seen to be, an open and trusted place to invest and do business. Knowing who ultimately owns and controls our companies will contribute to that objective.

It also matters because companies can be used to facilitate the conduct of illicit activities – from money laundering to tax evasion, corruption to terrorist financing. Greater transparency of company ownership and control will help us to deter and disrupt the misuse of companies, and identify and sanction those responsible when illegal activity does take place.

This is why the Prime Minister and the Secretary of State for Business, Innovation and Skills have made corporate transparency a priority, starting with the commitments we made at the UK-chaired G8 Summit in June 2013. Central to our proposed reforms is the implementation of a publicly accessible central register of company beneficial ownership information.

Primary and secondary legislation is needed to take forward that commitment. The Small Business, Enterprise and Employment Bill is currently before Parliament and sets the framework for this 'register of people with significant control' or 'PSC register'. This paper considers the policy questions around two core areas of the secondary legislation - the way that a person's control over a company is described on the register and the way we ensure that PSCs' personal data is adequately protected.

The paper also seeks views on how we can best support companies and others to understand the new requirements. For the vast majority of companies it will be straightforward to identify who owns and controls them and we need to make this message clear. We also need to provide appropriate support and guidance to those companies with more complex arrangements.

The PSC register represents a significant step forward in company transparency and the UK is at the forefront of this agenda internationally. But to derive maximum global benefit we need as many countries as possible to follow our lead. That is why we are continuing to work hard to encourage other jurisdictions to take equally ambitious action.

**JO SWINSON**

**Minister for Employment Relations and Consumer Affairs**

# Executive summary

1. The UK has committed to take concrete action to tackle the criminal misuse of companies, including by increasing the transparency of company ownership and control.
2. Central to this is the implementation of a publicly accessible central register of the individuals who ultimately own and control UK companies – the company's beneficial owners or 'people with significant control'. The Small Business, Enterprise and Employment (SBEE) Bill will implement this reform by introducing a register of people with significant control over a company (the 'PSC register'<sup>1</sup>). The SBEE Bill is currently being debated by Parliament.
3. The Bill defines what is meant by a person with significant control (PSC). It also sets out how companies must obtain and hold this information in a register; and file the information with the registrar of companies (Companies House) where it will be made publicly available.
4. Much of the detail necessary for implementation will be set out in secondary legislation once the SBEE Bill has received Royal Assent, which is subject to the will of Parliament. This paper seeks views on two elements of the secondary legislation and the guidance that will be required to help companies and others understand the changes.
5. This reform represents a significant change in terms of transparency of UK company ownership and control. The UK is leading the way internationally. There is however growing international recognition of the need for change and we are continuing to push hard for ambitious global outcomes.

## *Understanding the new requirements*

6. Companies, individuals and others must have a clear and consistent understanding of the new requirements.
7. An individual may be a PSC through ownership of shares or voting rights or the ability to appoint or remove directors. They may also be a PSC as a result of having some other form of 'significant influence or control' over the company. The SBEE Bill requires the Secretary of State to publish guidance about the meaning of 'significant influence or control' and lay this before Parliament<sup>2</sup>. The paper seeks views on the structure, format and content of the guidance and asks whether an external Working Group would be a good way to develop it.
8. The paper also seeks views on the production of wider guidance, for example around the way PSC information must be obtained and held. This would accompany information produced by Companies House in relation to filing PSC information with the registrar of companies.

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<sup>1</sup> SBEE Bill, clause 70: <http://services.parliament.uk/bills/2014-15/smallbusinessenterpriseandemployment.html>

<sup>2</sup> Paragraph 20 of Schedule 1A to the Companies Act 2006, as inserted by the SBEE Bill

## ***Nature of control***

9. The PSC register will hold information on PSCs and the way they exercise control over the company. This will help searchers of the register build a picture of the company's ownership and control structure. The SBEE Bill enables regulations to be made setting out the information that is required and how it should be recorded. The paper seeks views on their content.
10. It would be possible for Government not to make regulations, leaving companies a free hand in what is entered in the register. However, the need for consistency, clarity and simplicity argues for a degree of prescription. The paper therefore proposes a drop down menu approach to compile the information. The options might be very simple, for example along the lines of listing which one or more of the five specified conditions for being a PSC is met. Alternatively they might contain more information whilst retaining a simple drop down approach.
11. The paper notes that the majority of PSC register entries will be straightforward and invites views on whether a different approach would be required for the more complex.

## ***Protection regime***

12. Transparency is inherently a good thing. That is why we have opted to make PSC information publicly available. There is however some information which is useful to law enforcement agencies and other specified public authorities in carrying out investigations but would pose an unacceptable level of risk to individuals in terms of the potential for identity theft and fraud were it made publicly available. The paper seeks views on the operation of this 'protection regime'.
13. The usual residential address (URA) of a PSC will not be publicly disclosed. It will however be accessible to specified public authorities and credit reference agencies (CRAs) on request. Some individuals may consider themselves to be at increased risk of harm if their URA were to be shared with CRAs. The paper outlines the existing model that allows company directors to apply to prevent their URA being shared with CRAs and seeks views on whether any modifications are required in the context of PSCs.
14. Some individuals may be placed at serious risk of harm if they are publicly known to be associated with a certain company. We have committed to put in place a regime for people at serious risk of harm which would allow individuals to apply to have their personal information protected from disclosure on the PSC register in exceptional circumstances.
15. The paper explores how this process might work, including the criteria for application; how the registrar would make a decision; and how long the protection would last. It also considers the authorities with whom this information might be shared.
16. The paper discusses the costs of applying for protection and accessing PSC information. It looks at whether and how information that is not publicly disclosed might be shared with overseas and domestic authorities.
17. Finally the paper seeks views on the costs and benefits of our proposals with a view to preparing or updating impact assessments in due course.

## How to respond

18. Submissions of evidence should be emailed to [transparencyandtrust@bis.gsi.gov.uk](mailto:transparencyandtrust@bis.gsi.gov.uk) clearly marked as a response to the '*PSC register discussion paper*'.
19. We are inviting submissions and evidence by **9 December 2014** to inform our development of the guidance and secondary legislation for the PSC register.
20. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.
21. Submissions may also be sent in hard copy to the following address:

Transparency and Trust  
Corporate Law Reform Team  
Department for Business, Innovation and Skills  
Spur 1, 3<sup>rd</sup> Floor  
1 Victoria Street  
London  
SW1H 0ET

22. We regret that we are not able to receive faxed documents. Other versions of this document in Braille, other languages or audio-cassette are available on request.

## Confidentiality and data protection

23. Information provided in response to this discussion paper, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide, to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
24. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

## Help with queries

25. If you have any questions about the proposals in this document please contact the team using the address above or on 0207 215 6417.

# Introduction

## The PSC register

26. During the UK's Presidency of the G8 in 2013 the UK and our G8<sup>3</sup> partners committed to take concrete action to tackle the misuse of companies. In July 2013 the Department for Business, Innovation and Skills (BIS) published a discussion paper seeking views on a range of proposals to enhance transparency of UK company ownership and increase trust in UK business. We published our formal response to that paper in April 2014<sup>4</sup>. Primary and secondary legislation is needed to implement these reforms and the Small Business, Enterprise and Employment (SBEE) Bill makes provision for the primary legislation. The SBEE Bill was brought before Parliament in June this year and is currently being debated.
27. Central to these reforms is our commitment to implement a publicly accessible central register of the individuals who ultimately own and control UK companies – the company's beneficial owners or 'people with significant control' (PSCs). The SBEE Bill inserts new Part 21A into the Companies Act 2006 (CA06). Companies in scope of Part 21A will be required to obtain and hold information on their PSCs. The SBEE Bill defines PSCs as individuals who directly or indirectly own or control more than 25% of the company's shares or voting rights, or who exercise some other form of significant control over the company.
28. The SBEE Bill places statutory obligations on companies and individuals to ensure this information is obtained and kept up to date. Companies must hold this information in a register and keep it available for inspection. This register is referred to in this paper as the **company's PSC register**. Criminal penalties will apply to companies and individuals who fail to provide information or provide false information.
29. PSC information must be provided to the registrar of companies (**Companies House**) before a company can be incorporated. Thereafter information must be checked and, if necessary, updated at least annually as part of the new confirmation statement requirements which will replace the annual return<sup>5</sup>. This information will be made publicly available, with limited exceptions as described in this paper. The PSC information held by Companies House and made public is referred to in this paper as the **public PSC register**.
30. Some PSC information will not be publicly available via the company or Companies House. This information is referred to in this paper as **protected PSC information**.

## Purpose of this paper

31. It will be crucial that companies, individuals and others understand the new requirements. This includes whether and how an individual needs to be registered as a PSC and what information should be filed and when. **Chapter 1** of this paper considers the guidance – both statutory and non-statutory – that we might need, and how this might be produced.

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<sup>3</sup> Now G7

<sup>4</sup> *Transparency and Trust Government response*, BIS, April 2014:

<https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>

<sup>5</sup> See clause 80 of the SBEE Bill ('Duty to deliver confirmation statement instead of annual return')

32. Much of the detail as to how the PSC register will work will be set out in secondary legislation once the SBEE Bill has received Royal Assent. It is vital that we get that detail right. This discussion paper marks the start of that process, seeking views on two key elements which are fundamental to the successful operation of the register.
33. The first is the way in which the nature of a person's control over a company is recorded on the PSC register. **Chapter 2** seeks views on a number of options. The second is disclosure of and access to PSC data on the company and public registers. **Chapter 3** of the paper considers the operation of this 'protection regime'.
34. **Chapter 4** considers some of the broader questions around the protection regime, including the costs of operation and the way specified authorities can access protected information. Finally, **Chapter 5** seeks views on the costs and benefits of our proposals.

## Next steps

35. Over the coming months we will continue to seek input on the range of areas requiring secondary legislation. In parallel the SBEE Bill will continue its Parliamentary passage. We will look to implement the register as soon as practicable once the necessary primary and secondary legislation is in place. We are already considering the communication and systems changes (both for companies and for Companies House) that this will require.
36. This reform represents a significant change in terms of transparency of UK company ownership and control. The UK is leading the way internationally and will continue to encourage other countries to follow our example – including through the G7, G20, EU<sup>6</sup> and the Financial Action Task Force (FATF). There is growing international recognition of the need for change and we are pushing hard for ambitious global outcomes.
37. We are grateful to all those who have engaged with this important agenda to date and look forward to your continued contribution.

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<sup>6</sup> In the context of proposals for a Fourth Money Laundering Directive (2013/0025 (COD))

# Chapter 1: Understanding the new requirements

## Introduction and context

38. We have used the existing definition of ‘beneficial ownership’ - as applied in the anti-money laundering context - as the basis for our statutory definition of a PSC. Proposed Schedule 1A to the Companies Act 2006 sets out five conditions (‘the specified conditions’) that constitute significant control:

- 1) Direct or indirect ownership of more than 25% of a company’s shares;
- 2) Direct or indirect control of more than 25% of a company’s voting rights;
- 3) Direct or indirect right to appoint or remove a majority of the board of company directors;
- 4) Exercise or right to exercise significant influence or control over a company; and/or
- 5) Exercise or right to exercise significant influence or control over activities of a trust or firm which itself meets one or more of the first four conditions.

39. An individual meeting one or more of these conditions is a PSC. Further detail as to how the conditions should be interpreted is contained within Schedule 1A<sup>7</sup>.

## Our proposals

40. We anticipate that for the vast majority of companies, working out who needs to be registered as a PSC should pose few difficulties. Some companies may however have more complex structures, potentially including arrangements which involve individuals who fall under the fourth condition of ‘significant influence or control’.

41. This phrasing is intentionally broad as we want to cover all the ways a person may control a company. However, it will be important that companies and others understand the requirements. The SBEE Bill therefore requires the Secretary of State to publish guidance about the meaning of ‘significant influence or control’ and lay this before Parliament<sup>8</sup>. We will ensure this guidance is in place before companies are required to start keeping a PSC register.

42. The objective is to ensure that the guidance is:

- clear and concise;

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<sup>7</sup> There are certain situations in which a legal person (as opposed to an individual) will need to be noted in the PSC register. These entities are referred to as ‘relevant legal entities’ (‘RLEs’) – see proposed section 790C of Part 21A of the CA06.

<sup>8</sup> Paragraph 20 of Schedule 1A to the CA06, as inserted by the SBEE Bill

- comprehensive (without being exhaustive); and
- user-friendly.

43. As we think about the structure, format and content of that guidance we are interested in what companies, professional advisors and others would find most useful. For example, would practical examples or high level principles be most useful, or a combination of the two? What sort of scenarios or structures might we want to consider? In thinking about this, respondents will want to consider arrangements that would give individuals a level of control over the company that is broadly equivalent to that given by the other specified conditions.

- **We welcome your views on the structure, format and content of the statutory guidance on significant influence and control.**

44. In terms of how we produce the guidance, one option would be to set up an external Working Group to prepare the document. This would allow us to fully incorporate the views of experts and practitioners, and should help us meet the objectives set out above. Whilst the size of the group would need to be carefully managed to ensure effective working, we would likely also seek wider views on the content prior to its publication.

- **Do you agree that a Working Group would be useful?**
  - **If yes, which organisations and interests ought to be represented on it?**
  - **If not, what would be your preferred alternative?**

## Wider guidance

45. There will also be a need for guidance beyond the meaning of significant influence or control. This might cover the other conditions of being a PSC, as well as wider questions around the PSC register. It would supplement any guidance produced by Companies House to support understanding of the filing requirements for the PSC register and would not necessarily need to be produced by Government. This guidance would be non-statutory and would not need to be laid before Parliament.

- **What are the key areas we should cover in non-statutory guidance?**
- **How best should it be communicated to companies and others?**
- **Who should lead on or be involved in its production?**

# Chapter 2: Recording nature of control on the PSC register

## Introduction and context

46. The purpose of the PSC register is to provide greater transparency of company ownership and control. For companies in scope, the register will need to indicate who exercises the control and also how this control is held. This will help users of the register build up a picture of the company's structure. Discussions with stakeholders have confirmed our view that the majority of PSC arrangements are straightforward, but there will be a small number of more complex cases.
47. In thinking about how this information should be recorded we have a number of objectives. First, we must avoid imposing disproportionate requirements on companies in terms of the levels of information they are required to provide and keep up to date. This is important from the perspective of minimising burdens on business and maximising the ability for companies to comply. It is also important from the perspective of ensuring that information on the register is clear and comprehensible to users. Even though the way control is held may be complex, it does not follow that the register itself must present information in this way.
48. Second, we know that some information relating to the way control is held would normally be kept confidential for commercial or other reasons. For example, the contents of shareholder agreements or trust deeds. We do not think it is appropriate or necessary to require such information to be placed in the public domain.
49. Third, we want to seek an appropriate level of consistency between the information held by different companies in their company PSC registers in terms of how the nature of control is recorded. Without a level of consistency the information held on company registers may be excessively technical or lengthy.
50. Finally, we want to take into account the ease of filing at Companies House. Government strongly favours digital solutions and companies incorporating electronically at Companies House currently benefit from a reduced fee, compared to those using a paper incorporation process. We wish to maintain this support for digital returns.
51. In summary, our objectives are to ensure that information on the PSC register about the nature of control:
- is clear and concise;
  - is relevant, appropriate and proportionate;
  - respects confidential information;
  - is consistent (both across companies' own registers, and across the company and public PSC register); and

- allows companies to complete their registers and returns to Companies House quickly and easily, particularly in the case of digital filings ('e-filings').

• **We welcome your views on whether these objectives are appropriate and whether there are any other factors that should be taken into account.**

## Our proposals

52. Proposed section 790K of Part 21A sets out the information that must be entered in the PSC register under section 790M (see **Annex A**). This includes the nature of the person's control over the company, in line with the specified conditions set out in proposed Schedule 1A (see **Chapter 1**). Section 790K(5) permits the Secretary of State to make additional provisions by regulation as to how the nature of control is entered by a company in its PSC register.
53. There is however no obligation on Government to regulate. The primary legislation in the SBEE Bill is sufficient to require companies in scope to compile and hold a PSC register. Respondents may not consider further provision necessary. This would leave companies with total freedom over all aspects of the information that is recorded under 'nature of control'.
54. Whilst we welcome views on this approach and the value of free text options, our experience is that where respondents are provided with a free text option to describe what applies, we would expect significant variation in the relevance, quality and quantity of what is submitted.
55. Subject to the views received in response to this paper, we therefore believe there is value in further provisions setting out a clear and simple approach on this issue. In thinking about this, and how we might develop accompanying forms and systems, we have considered the approach taken for similar financial disclosure requirements, specifically the notification requirements under the Financial Conduct Authority Disclosure and Transparency Rules (DTRs). These rules apply to shareholders of companies listed in the UK and holders of certain financial instruments relating to those shares. The rules require them to disclose ownership information when their holding reaches or falls below a given threshold.
56. The forms used (TR-1 and TR-2<sup>9</sup>) are designed with digital and paper responses in mind and provide a number of check box options to indicate the reason(s) for the notification. An "other category" is also provided for free text information.
57. In thinking about a drop down menu approach there remain several options. The full description of nature of control covers a number of variables and there are a number of ways we could require this information to be presented. We might require simple cases, which we believe will be the vast majority, to use one standard form and more complex cases another.

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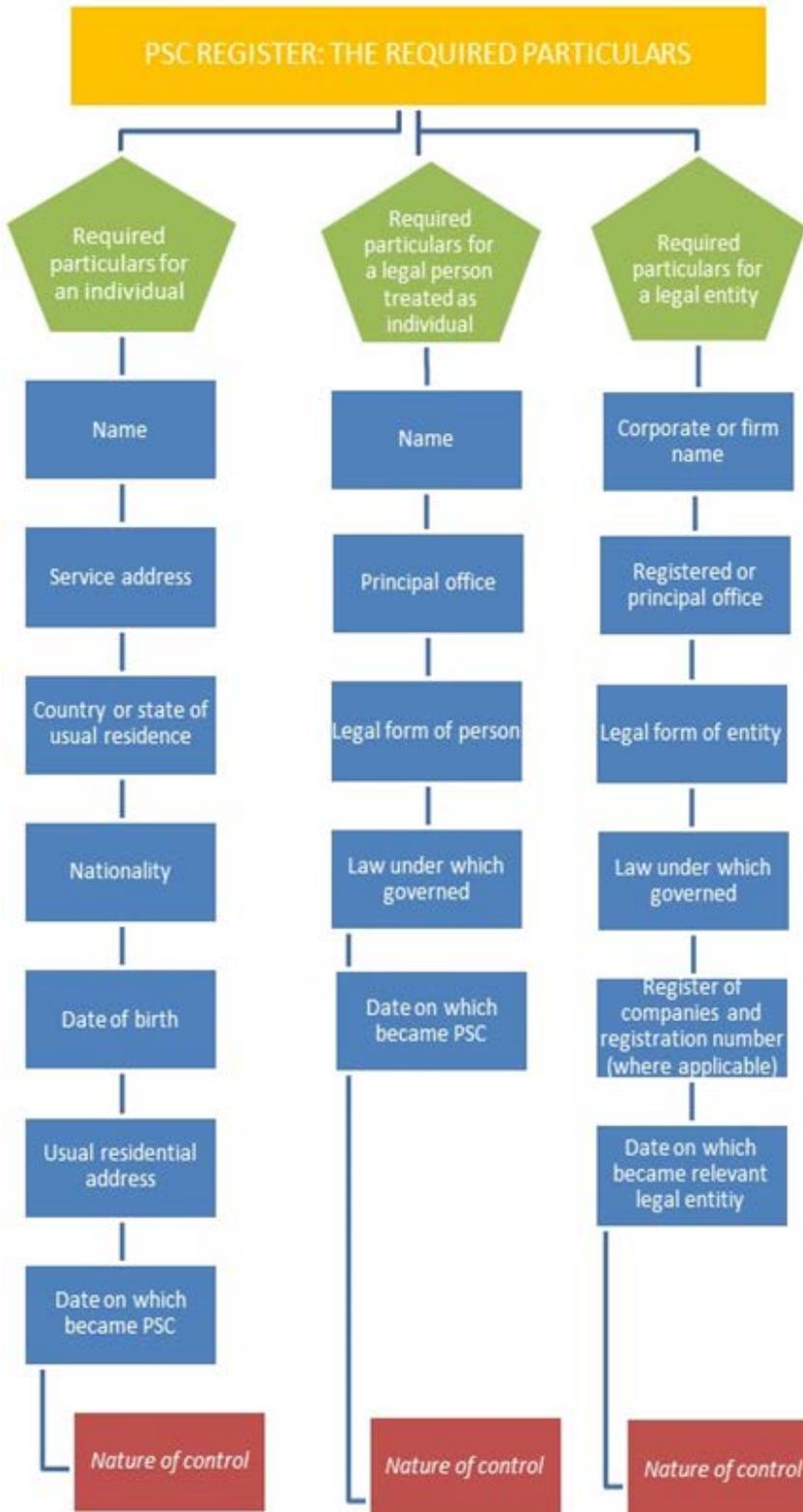
<sup>9</sup> <http://www.fca.org.uk/firms/markets/ukla/forms> (October 2014)

58. To meet the objectives outlined above we are considering an approach that would break down the nature of control into a series of sub elements with a discrete number of 'options'. This would fit with completion of the other formulaic "required particulars" (e.g. name, address, date of birth) and help serve the goal of simplicity.
59. The information required to be entered in the company's PSC register must be filed at Companies House on incorporation and confirmed at least annually. Standard categories will therefore help to ensure the information is easy to submit to Companies House and consistent across companies. We believe that a consistent approach will be an advantage to people accessing the public register as they will quickly learn how and in what format information is recorded and be able to locate the information they are seeking more quickly.
60. The following three diagrams illustrate how a categorised approach might be taken forward. The **first** of these shows the formulaic "required particulars" of a PSC. The **second** and **third** diagrams illustrate a simple and more detailed approach to categorising the nature of control, respectively. The simpler approach uses the five specified conditions that constitute significant control<sup>10</sup> as a basis. The company would indicate which one or more of the categories were relevant in relation to the PSC. The more detailed approach would provide a fuller picture of the ownership and control structure. It includes a free text option for arrangements that cannot be otherwise described.

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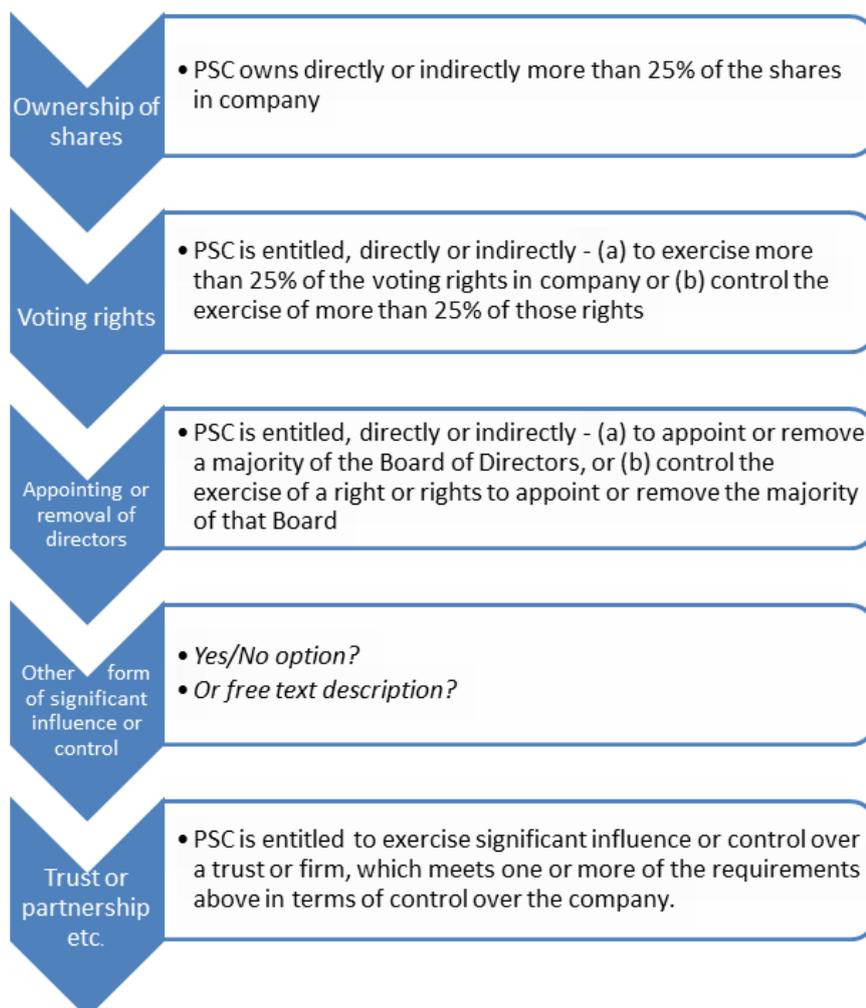
<sup>10</sup> See proposed Schedule 1A to the Companies Act 2006, as inserted by Schedule 3 to the SBEE Bill

**Example 1: The required particulars**



## Example 2: Recording the nature of control – simpler approach

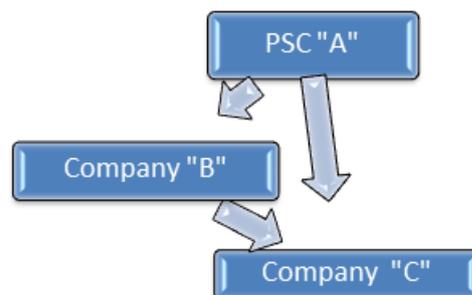
Here the company is required to indicate which one or more of the following categories are relevant:



### Example 3: Recording the nature of control – more detailed approach

Here there is more focus on how the company is controlled. The first chevron replicates much of the content of the previous diagram. It seeks to record how the nature of control is exercised where the control is not direct. This might exist where shares in company C are held by an intermediate entity over which individual A has control – and can therefore direct how the intermediate company exercises its vote. For example, as illustrated to the right, individual A owns 8% of the shares in company C and also owns 100% of the shares in company B, which in turn owns 24% of the shares in company C. A owns directly 8% of the shares in C, and controls 24% indirectly. A would therefore control, directly and indirectly, 32% of the shares in C.

- "A" is PSC of "B" via direct 100% ownership.  
 - "A" is PSC of "C" via 8% direct and 24% indirect ownership.



- Form of control  
(can select more than one)

- More than 25% of shares
  - More than 25% of voting rights
  - Ability to appoint and remove directors
  - Other form of significant influence or control
- Exercise of control

- Direct
  - Indirect
  - Direct and indirect / free text option to describe
- Structure of control  
(if indirect)

- Via control of holding or parent company
  - Via a trust
  - Via a partnership
  - Via a joint arrangement
  - Other form of significant influence or control
- If other?

- Free text option to describe other forms of significant control?

- **Do you agree with the approach of simplifying and standardising what is recorded under nature of control?**
  - **If yes, which is your preferred model?**
  - **If not, what is your preferred alternative?**
- **Should there be a different approach for more complex arrangements? Does this need to provide a full explanation of the nature of control?**
- **If you prefer a less prescriptive system, what safeguards should exist to ensure that entries in the register are comparable and easy to understand?**

# Chapter 3: Protection regime

## Introduction and context

61. Making the PSC register publicly accessible is consistent with the UK's commitment to openness and transparency, and builds on established principles of making information on UK companies publicly available.
62. In certain circumstances there are, however, legitimate reasons for individuals wishing to avoid public disclosure of information, in order to protect their own and family members' personal safety and well-being. This should not restrict access to the information by law enforcement and other specified bodies.
63. There are several elements to what we collectively refer to in this paper as the 'protection regime':
- 1) **The automatic protection of all PSCs' usual residential addresses (URAs) from public disclosure on the public and company register. This information would only be accessible by specified public authorities and credit reference agencies (CRAs).**
    - This reflects the regime that applies currently in respect of company directors. Proposed section 790ZE of Part 21A (see **Annex A**) applies the directors' URA regime to PSCs, including the provision to make regulations (setting out, for example, which authorities may access the information).
  - 2) **The ability for PSCs to apply so that their URA is not disclosed to CRAs.**
    - Although the use of URA data by CRAs is closely prescribed, some PSCs may consider that they are at increased risk of violence or intimidation if their URA is shared with CRAs. The company directors' regime allows directors to apply to Companies House to prevent their URA being shared with CRAs. This provision is again replicated for PSCs.
  - 3) **The protection of all PSCs' day of date of birth from disclosure on the public PSC register<sup>11</sup>.**
    - We believe that placing the full date of birth of directors and PSCs on the public register poses an unnecessary risk of fraud or identity theft to individuals. Clause 84 of the SBEE Bill therefore provides that the day of the date of birth should be protected on the public register. This information will still be available on the company's own register and to specified public authorities via Companies House. This will be set out in regulations.
  - 4) **The ability for PSCs at serious risk of harm to apply to have their PSC information protected from disclosure on the public and company PSC registers. This information would only be accessible by specified public authorities.**
    - This is dealt with in proposed section 790ZF of Part 21A (see **Annex A**). This element is new and will not be replicated for directors. This is because we consider that the circumstances and reasons as to why someone might be a PSC are different to those governing a person's decision to be a company director.

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<sup>11</sup> Unless the company is a private company and has opted to hold its company PSC register solely on the public register. In that case the full date of birth will be publicly available.

64. Our objectives in taking forward the protection regime are to:

- Protect PSC data where appropriate or necessary;
- Set the criteria, and associated processes, for protection so that the integrity and robustness of the PSC register is not compromised; and
- Allow specified authorities access as quickly, cheaply and easily as possible to the protected PSC data where it is appropriate.

## Our proposals

### ***1) The automatic protection of all PSCs' usual residential addresses from disclosure on the public and company registers***

65. As noted above, we intend that the directors' URA regime will apply to PSCs once the legislation is in force. This means that PSCs' URAs will be automatically protected on the public and company register. URA information on the public register will be shared with specified public authorities and CRAs on request (subject to the meeting of certain conditions around data use and processing). The authorities currently able to access director URA information are listed in Schedule 1 to the *Companies (Disclosure of Address) Regulations 2009*<sup>12</sup> ('2009 Regulations'). This is considered further in **Chapter 4**.

### ***2) The ability for PSCs to apply so that their URA is not disclosed to credit reference agencies***

66. A PSC may apply to Companies House to prevent their URA being shared with CRAs. We intend to model this process on the current directors' regime. We have set out below the stages of the existing process for directors and welcome views on whether any modifications are required in the context of PSCs.

#### **Criteria:**

67. The grounds on which an application may be made are set out in regulation 5 to 7 of the 2009 Regulations. They are primarily that there is a serious risk that the individual in question or a person who lives with them will be subject to violence or intimidation as a result of the activities of the company.

#### **Application:**

68. Applications may be made by:

- an individual who is or proposes to become a director;
- a company on behalf of its directors; or
- a subscriber to a memorandum of association on behalf of any individual who proposes to be a director of a proposed company.

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<sup>12</sup> [SI 2009/214](#)

69. In the context of PSCs we are considering whether applications should be able to be made by a third party other than a company or a subscriber. For example, to enable a lawyer or accountant to apply on behalf of the individual. We welcome views on this.

70. The contents of the application include:

- a statement of the grounds for application;
- personal details of the individual to be protected;
- the applicant's and company's details; and
- supporting evidence.

71. Payment for the application must also be included (see **Chapter 4**).

### **Decision-making:**

72. The registrar may request additional information or evidence in relation to the application. He or she will decide if the application is granted and notify the applicant within five working days of that decision. The registrar can seek an assessment from a relevant authority in making that decision. This, in the current directors' regime, tends to be a police force.

### **Duration:**

73. The suppression of the director's URA is indefinite unless revoked by the registrar or if the director notifies the registrar that the protection should cease (see below).

### **Appeals:**

74. If the application is not granted the applicant can appeal within 21 days of receiving notice from the registrar to the High Court or, in Scotland, the Court of Session on specified grounds, including that the registrar's decision is unlawful, irrational or unreasonable.

### **Revocation:**

75. The director can request that the protection is revoked. This would allow the registrar to share the URA with CRAs.

76. Where an applicant is found guilty of providing false statements to the registrar in their URA suppression application the registrar can revoke the suppression following notice to the individual of his impending decision.

- **Should any modifications to this process be made in the context of PSCs?**
- **Should applications be allowed to be made by third parties other than the company or subscribers to the memorandum? If so, who?**

### **3) Suppression of the full date of birth**

77. This element is not dealt with specifically in this paper. We intend however that the way in which full date of birth information is used and disclosed, including to specified public authorities, should reflect the way that director and PSC URA information is used and disclosed.

### **4) Suppression of data of PSCs at serious risk of harm**

78. As noted above, there may be circumstances where public disclosure of the PSC's involvement in a company would pose a serious risk of harm to the individual and/or those who live with them. We have therefore committed to put a regime in place which will protect an individual's personal information from disclosure on the public and company PSC registers. This regime will be set out in secondary legislation.

79. We intend to base the process on the suppression of URAs from CRAs (as described above), with adjustments made in the application, decision-making and revocation processes to take into account the differences between the regime to protect people at serious risk of harm and the URA suppression regime. Adjustments will also need to be made to take account of the fact that information will need to be protected on the company's register and the public register maintained by Companies House. We need to consider how Companies House, the company and the applicant communicate to ensure that information is adequately protected.

#### **The information to be protected:**

80. We want to ensure that individuals are adequately protected. At the same time, we want to make sure that the company and public registers are as useful as possible to users. We are therefore considering which of the PSC particulars should be suppressed to ensure the PSC cannot be identified, and which - if any - could usefully remain on the public PSC register without increasing the threat of harm.

81. The following information will usually be made available publicly:

- Name;
- Service address;
- The country or state (or part of the United Kingdom) in which the individual is usually resident;
- Nationality;
- Date of birth<sup>13</sup>;
- Date on which the individual became a registrable person in relation to the company in question (and date on which they ceased to be such a person, where applicable); and
- The nature of his/her control over that company.

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<sup>13</sup> Only the month and year of birth will be available on the public register unless the company is a private company and has opted to keep its PSC register solely on the public register.

82. Our initial thinking is that the following data should be protected on the company and public registers:

- Name;
- The country or state (or part of the United Kingdom) in which the individual is usually resident;
- Nationality; and
- Date of birth.

83. We consider that the remaining particulars may not easily identify an individual and therefore might not need to be protected:

- Service address;
- Date on which the individual became a registrable person in relation to the company in question (and date on which they ceased to be such a person, where applicable); and
- The nature of his/her control over that company.

84. Alternatively we might not disclose any information on the PSC in question, and simply indicate on the register that information has been suppressed.

- **We welcome views on which of the required particulars should be suppressed from public disclosure?**

### Criteria:

85. How a person is defined as being at serious risk of harm will be a crucial element of these regulations as it sets the scope of the regime. We believe that the grounds for protection ('criteria') should be specific to the individual's status as the PSC of a company or companies. We need to consider whether and how the assessment of the risk should take into account the potential consequences of the threat and type of the injury or damage which could potentially be caused. We also need to consider how the assessment should take account of the source, nature and severity of the risk. In both cases we will need to decide where and how to draw the line between what is eligible for protection and what is not.

86. In the responses to the July 2013 Transparency and Trust discussion paper and subsequently, stakeholders provided a number of examples of how individuals could be at increased risk as a result of public disclosure of information. These included:

- Assault of those working for, or investing in a company, due to its activities or principles and values;
- Kidnap of individuals if the extent of their financial status becomes known;
- Financial loss (e.g. asset stripping) as a consequence of an individual being a PSC of a company;
- Distortion of market forces – such as an adverse competition impact as a result of competitors knowing that a rival is involved in another company as a PSC; and
- Serious reputational damage of a PSC, to the extent that the company is destroyed.

**Examples:****Example 1 – companies involved in controversial sectors**

There may be an evidenced risk of violence to individuals associated with certain companies due to the company's activities.

**Example 2 – companies working for companies involved in controversial sectors**

In addition to example 1, there may be circumstances where the companies in question do not engage in the controversial activity directly but may supply or work closely with those that do. Activists may have publicly stated their opposition to any companies that supply or work with their target company(ies).

**Example 3 – asset stripping or kidnap**

Some individuals in countries where the rule of law is weak investing in UK companies may be concerned that if their involvement with that company were known, people in their home state may take steps to seize their property or hold them/their families to ransom.

**Example 4 – religious or political affiliations**

An individual may be a PSC of a company which is affiliated with a specific religion or political group. The PSC may be publicly known to be associated with another religion or group. If those groups are in conflict then the PSC may not want his involvement with the company to be publicly known, for fear of reprisals from one (or both) groups.

**Example 5 – distortion of market forces**

A company might use another company to buy a site for development. There may be concerns that if the PSCs of the other company were known, this would alert competitors to the reason behind the acquisition. They may then move to delay or obstruct the acquisition.

87. We agree that in thinking about this regime we should consider factors other than the company's activities.
88. At the same time it is essential to the integrity of the PSC register that the protection regime is prevented from misuse. Protection from public disclosure of PSC data should be granted only to those who are at serious risk of harm. On that basis, we are not persuaded that competition or reputational impact should be taken into account.
89. We welcome views on this and whether there are other factors that might also be considered. There might be more complex scenarios we need to take into account, for example, where disclosure of one individual's involvement in the company would put other individuals associated with the company (whether as directors, shareholders or PSCs) at risk.

**We welcome views on:**

- **The factors that should be taken into consideration when deciding whether someone is eligible for protection?**
- **Where the line should be drawn between actual and possible threat?**
- **Whether there are sectors or types of company or individual that are inherently at risk? Which?**
- **Any evidence you have on the link between public disclosure and the consequences for individuals at risk; and the costs/impacts of those consequences?**

**Application:**

90. As under the directors' URA regime we intend to allow applications by PSCs, and companies and subscribers on their behalf. Companies carrying out controversial activities may, for example, want to apply to protect all of their PSCs. As above, we also intend to consider whether applications should be able to be made by other third parties. For example, to enable a lawyer or accountant to apply on behalf of the individual. We welcome views on this.
91. Applications would be made to the registrar. At the same time the applicant might want to notify the company of the application so that the company can prepare to take the necessary steps to protect the PSC's information on the company register while the application is with the registrar for decision (see below).
92. We anticipate that applications for protection might use a standard template requiring information along the lines below:
- Personal details of the applicant;
  - Personal details of the PSC;
  - Company details such as company registration number;
  - Length of protection being applied for (see 'duration' below);
  - Explanation of how the individual is at risk, or a "statement of grounds of application" and accompanying evidence. This might include:
    - Nature and proven extent of risk of harm considered by the applicant to arise in relation to the PSC. Evidence might include court documents such as injunctions

- or non-harassment orders or details of the perceived or actual threat, as well as any history of intimidation, violence or disruption; and
- If the PSC believes that those who live with him or her would also be at risk, then the applicant can build this into the statement, alongside supporting evidence to confirm the connection.

93. The applicant would also need to enclose the required payment (see **Chapter 4**).

**We welcome views on:**

- **Who should be able to make an application, including whether and when third parties should be able to apply?**
- **The evidence requirements to support the application?**

94. It has been suggested that applications could be certified by regulated providers of professional services to companies which are already subject to the Money Laundering Regulations 2007. Whilst there may be some merit in a qualifying statement to verify the contents of the application and accompanying evidence, we do not think that regulated service providers would be best placed to perform this role. There may however be certain other groups or professions who could make such a statement (for example, the police or other relevant organisations). We would need to carefully consider the impact of such a move on the ability and ease with which people would be able to submit the application.

- **Do you think applications should be accompanied by a qualifying statement?**
- **If yes, who should be able to make such a statement?**

95. Normally we anticipate that applications would be made at the point someone becomes a PSC. We are however considering whether and how we might deal with applications which are retrospective, prospective and/or 'cumulative' in nature:

- A **retrospective application** would be where the PSC data is already on the public and company registers, but due to previously unforeseen circumstances the risk of harm has increased for the PSC. One such scenario would be where the company's activities have become contentious as a result of changing circumstances. We envisage that such applications would follow the usual process – and that data, including historic data, would be suppressed from the point the application was submitted (pending decision by the registrar).
- A **prospective application** would be where an individual who intends to become a PSC of a company believes they have good grounds to have their personal data protected once they become a PSC. For example, an individual wishes to invest via an intermediary in the company to the extent that he would become a PSC but wants to have his personal safety assured before committing to the investment. Whilst we see merit in such an approach we need to carefully consider the practicalities – including how far in advance someone might be able to make an application.

- A **cumulative application** would be where, for example, an individual is already a PSC of two companies and then becomes a PSC of a third. The individual may believe that being the PSC of the third company could increase the risk of harm to him as a result of the cumulative effect of being publicly known to have interests in the three companies (particularly as we intend the public PSC register to be searchable by name as well as by company).

96. There may also be circumstances where an individual is a PSC of multiple companies and believes that public disclosure in relation to each of them would put him or her at serious risk of harm. In such cases we think it would be necessary to require a separate application in respect of each company. We do not think that individuals should be able to obtain a 'blanket' exemption from public disclosure in respect of all current and future companies of which they are or will be a PSC. However, we welcome views on this.

#### **We welcome views on:**

- **Retrospective applications;**
- **Prospective applications;**
- **Cumulative applications; and**
- **Whether 'blanket' applications should be able to be made in respect of all companies of which an individual is a PSC.**

#### **Treatment of protected information on the public register, during and after the application process:**

97. On application we intend that the registrar would protect the PSC information in question from disclosure on the public register, pending decision. The registrar should also notify the company of the information to be protected from inspection on the company register until further notice. Some specified authorities would still be able to access protected information via Companies House (see **Chapter 4**).

98. As noted above, we are considering how protected information is marked on the register. As part of this we will need to consider whether information is differently marked when an application is 'pending'.

#### **Decision-making:**

99. The registrar will consider the statement and supporting evidence to decide if the application is granted. We intend to allow the registrar to seek advice from other specified authorities, such as the police, as the registrar sees fit to determine whether the application should be granted. A key consideration will be the level of threat to the individual and whether this is perceived, likely or actual (in line with the approach taken under international standards of risk and threat assessment).

100. The application might be rejected due to:

- Not enough information available to make a decision; or
- The risk and threat assessment points to negligible potential consequences.

101. If the information for an application is incomplete, the registrar might seek additional information from the applicant.

102. If an application is **successful**, the PSC's particulars will be suppressed from the public register. The registrar will need to communicate that decision to the company so that information can be protected on the company register. The registrar might also contact the applicant and the PSC (where necessary).

103. If the application **is not successful**, the registrar will need to notify the company so that information can be disclosed on the company's register. The registrar might also contact the applicant and the PSC (where necessary).

### Duration:

104. We think there is a strong argument that information should be protected indefinitely once an application is granted, both to protect the individual and to minimise the costs and burdens associated with a renewal regime. This would also be consistent with the current directors' URA regime.

105. Alternatively, we could consider a renewal process, for example, every five or ten years. The PSC, or a person on their behalf, might need to resubmit the necessary information to demonstrate the continued risk. We would need to carefully consider the outcome where someone failed to respond to a renewal request in view of the potential risk to that individual if the protection were to be lifted. We might allow a 'grace period' in which the information remained protected.

106. We would also need to consider what would happen if the protection was not renewed – whether all data, including historic data, would then be made available for public inspection or just the data that was current at the point the protection ceased to apply. We would need to ensure this was marked on the register in such a way that the information was not misleading or confusing.

### We welcome views on:

- **Whether a PSC's protection should be indefinite?**
- **If not, how and how often it should be renewed?**

### Appeals:

107. As a starting point, we would use the current directors' URA regime, where an applicant can appeal to the High Court or, in Scotland, the Court of Session on specified grounds, including that the registrar's decision is unlawful, irrational or unreasonable. The applicant

has to appeal within 21 days of receiving notice from the registrar, or longer with the court's permission.

108. During the appeal process, the information would remain protected on the public and company registers. If the appeal is upheld then the information would remain protected. If the appeal is overturned then the PSC information would be made available (again) on the public register, and the registrar would notify the company to make the information available for public inspection on the company register.

109. Some stakeholders have suggested that where there is strong public interest in the full disclosure of a company's PSCs, appeals should be able to be made by third parties to that effect. We do not believe this is practical as third parties would not know the grounds on which an application had been granted, so there would not be anything concrete against which to appeal. Should a third party think that false statements had been made to the registrar, action could be taken under the existing company law false statement offence. This provides that it is a criminal offence to knowingly or recklessly provide false information to the registrar of companies<sup>14</sup>.

110. We are however considering including information on the use of the protection regime as part of the information that BIS/Companies House makes publicly available. This might include the number of successful and unsuccessful applications.

- **We welcome views on an appeals process.**

### Revocation:

111. We are considering whether and how the protection should be revoked. At a minimum we would intend to use the URA model described above – i.e. that the registrar may revoke the protection if false information is provided in the context of the application, and that individuals may apply for the protection to cease.

112. In addition, we might provide that the protection of the relevant PSC particulars would only be valid so long as the individual continues to meet one or more of the criteria for the protection regime. In that case the applicant would be obliged to notify the registrar of any material change of circumstances. We would need to think carefully through the possible scenarios and outcomes if we were to adopt this approach.

- **We welcome views on a revocation process.**

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<sup>14</sup> Section 1112 of the Companies Act 2006 ('General false statement offence')

# Chapter 4: Costs and access

## Accessing the public register

113. PSC information on the public register will be freely accessible online in machine readable format. We intend to build a system which can be searched by company and by individual. This means UK and overseas citizens and authorities will be able to quickly and easily access relevant information. When thinking about how we share information with public authorities, this might mean sharing individual PSC records in some cases or, in others, bulk data which can be matched against other data sets to identify anomalies or patterns.
114. Currently, Companies House provides a variety of access methods to information on the public register. Information can be accessed online, by post, fax, email or in person. A subscription service is available and bulk data can be purchased. Further information can be found on the Companies House website<sup>15</sup>.

## Accessing protected information – UK authorities and CRAs

115. It is important that certain authorities can access protected information on request. The 2009 Regulations allow specified public authorities and CRAs to apply to the registrar for access to directors' URA information (see Schedule 1 to the Regulations at **Annex B**). As above, there is a range of options (and costs) for accessing data, from one-off requests to bulk transfers. Before information is shared, Companies House verifies the identity of the requestor and that they are one of the specified authorities. The information is then sent via encrypted email. Authorities must follow the specified conditions for use and processing of the data set out in the 2009 Regulations.
116. We intend to replicate this system for the PSCs' URA regime. However, we welcome views on whether the current list of bodies is appropriate.
117. We intend to use the same process of verification and encryption to share protected information of PSCs at serious risk of harm. However, this information would not be accessible to CRAs. We are also considering whether a narrower list of authorities should be able to access this information, given its sensitivity.

### We welcome views on:

- **Whether the current list of public authorities is appropriate in the context of PSCs' URA information?**
- **Whether the current list of public authorities should be narrowed in the context of information of PSCs at serious risk of harm?**
- **If yes, who should still have access?**

<sup>15</sup> <http://www.companieshouse.gov.uk/toolsToHelp/ourPrices.shtml> (October 2014)

## Accessing protected information – overseas authorities

118. To derive maximum benefit from the PSC register it will be important that overseas authorities are also able to access protected information as quickly, cheaply and easily as possible – provided it is appropriate and safe to do so. We are considering a number of options to enable us to do this.
119. Under the 2009 Regulations, Companies House may share directors' URA information with a limited number of public authorities within the European Economic Area (EEA)<sup>16</sup>. In order to share data more widely we might look to existing information exchange mechanisms – for example Mutual Legal Assistance routes. We are also considering whether we can develop new routes which might enable information to be shared more quickly or directly – i.e. without the need for an intermediary between the requesting authority and Companies House.
120. There are important legislative and operational considerations for Government as we think about these processes. We would need to ensure that receiving jurisdictions and overseas public authorities' standards meet and comply with those of UK data protection standards or equivalent, including in respect of the handling and storage of data. For example, information exchanges between EEA countries are permissible due to the consistent application of EU data protection law.
121. Factors such as the rules and laws in force in the receiving country, its international obligations and human rights record, and the type of data transferred, may also need to be used to assess whether it is appropriate to share personal data such as residential addresses and full dates of birth.
122. This means that for jurisdictions outside the EEA we would need to carefully consider whether overseas requests for information could be determined and met by the registrar – either alone or following advice from relevant expert authorities - or whether it would be more appropriate to use existing channels for information exchange.
123. Ultimately a combination of routes may be needed to allow data to be shared as widely as possible whilst ensuring that appropriate checks and safeguards are in place. We will continue to consider this as we develop the protection regime, working closely with other Government departments and agencies including HM Revenue & Customs, the Department for International Development, the Home Office and the National Crime Agency.

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<sup>16</sup> See Schedule 1 to the 2009 Regulations and section 82 of the Companies Act 1989

## Costs

### Applications to protect information

124. Companies House is a Trading Fund. In essence, this means it is self-funding and therefore needs to recover any costs incurred when providing services or information. It is not able to cross subsidise – so revenue from one activity cannot be used to fund something else.

125. This means that there will be a cost associated with applications to prevent URA information being shared with CRAs and protect information more broadly. These fees will be set according to the forecast cost of providing each service and the way in which customers access them, in line with European Law and HM Treasury guidance. Currently the fee for directors to apply not to have information shared with CRAs is £100<sup>17</sup>.

### Access to protected information

126. Companies House has stated its intent to make all of its digital data available free of charge. While this will mean that PSC data on the public register can be accessed for free, it is not yet known what the arrangement for protected information will be. It will be important that such costs do not impact the ability of authorities – and overseas authorities in developing countries in particular – to access the data. We will continue to consider this as we further develop the process for sharing protected information within and outside the UK.

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<sup>17</sup> <http://www.companieshouse.gov.uk/toolsToHelp/ourPrices.shtml> (October 2014)

## Chapter 5: Impact of proposals

127. We have conducted and published a full **Privacy Impact Assessment** (PIA) on the PSC register measures<sup>18</sup>. The PIA evaluates the risks associated with the PSC policy around the collection of personal data, and outlines solutions which have been fed into policy thinking. This document will be updated as appropriate as the secondary legislation is developed.
128. We have also published a memorandum addressing issues arising under the **European Convention on Human Rights** (ECHR) in relation to the SBEE Bill<sup>19</sup>. This includes consideration of the PSC register.
129. We have already carried out an **Impact Assessment** in relation to the PSC register<sup>20</sup>. We will update this as necessary in relation to the nature of control policy. We will carry out a separate assessment of the economic impacts of the protection regime policy. We welcome views on the costs and benefits associated with these policies.

- **We welcome your views on the costs and benefits of the policy changes set out in this discussion document for those identified as people with significant control, companies and other third parties. These might include:**

### *Nature of control*

- **The costs of gathering and holding data on the nature of control for (i) the simpler approach and (ii) the more detailed approach; and**
- **The expected benefits for (i) the simpler approach and (ii) the more detailed approach.**

### *Protection regime*

- **The costs for companies and individuals of familiarisation with the guidance;**
- **The costs of gathering data and evidence and applying for the protection regime;**
- **The possible numbers of applications by (i) companies and (ii) PSCs themselves;**

<sup>18</sup> Transparency and Trust Privacy Impact Assessments, BIS, June 2014:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/324742/bis-14-884-transparency-and-trust-company-ownership-privacy-impact-assessments.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324742/bis-14-884-transparency-and-trust-company-ownership-privacy-impact-assessments.pdf)

<sup>19</sup> SBEE Bill ECHR Memorandum, BIS, July 2014:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/336758/bis-14-991-SBEE-Bill-ECHR-Memorandum.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336758/bis-14-991-SBEE-Bill-ECHR-Memorandum.pdf)

<sup>20</sup> Transparency and Trust Final Stage Impact Assessments, BIS, June 2014:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/324712/bis-14-908a-final-impact-assessments-part-a-companies-transparency-and-trust.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324712/bis-14-908a-final-impact-assessments-part-a-companies-transparency-and-trust.pdf)

- **The size and sectors of companies most likely to apply for protection on behalf of their PSCs;**
  - **Whether the degree of evidence/validation would affect the numbers of applications;**
  - **The expected benefits of protecting information on individuals at risk; and**
  - **The expected benefits of international exchange of PSC information.**
- **Any other costs or benefits or changes in investors' or firms' behaviour associated with the proposals outlined in this document.**

# Overview of questions

## Chapter 1: Understanding the new requirements

- 1) We welcome your views on the structure, format and content of the statutory guidance on significant influence and control.
- 2) Do you agree that a Working Group would be useful?
  - a) If yes, which organisations and interests ought to be represented on it?
  - b) If not, what would be your preferred alternative?
- 3) What are the key areas we should cover in non-statutory guidance?
- 4) How best should it be communicated to companies and others?
- 5) Who should lead on or be involved in its production?

## Chapter 2: Recording nature of control on the PSC register

- 6) We welcome your views on whether the [outlined] objectives are appropriate and whether there are any other factors that should be taken into account?
- 7) Do you agree with the approach of simplifying and standardising what is recorded under nature of control?
  - a) If yes, which is your preferred model?
  - b) If not, what is your preferred alternative?
- 8) Should there be a different approach for more complex arrangements? Does this need to provide a full explanation of the nature of control?
- 9) If you prefer a less prescriptive system, what safeguards should exist to ensure that entries in the register are comparable and easy to understand?

## Chapter 3: Protection regime

- 10) Should any modifications to this [URA suppression] process be made in the context of PSCs?
- 11) Should applications be allowed to be made by third parties other than the company or subscribers to the memorandum? If so, who?
- 12) We welcome views on which of the required particulars should be suppressed from public disclosure [in the context of PSCs at serious risk of harm]?
- 13) We welcome views on:
  - a) The factors that should be taken into consideration when deciding whether someone is eligible for protection?
  - b) Where the line should be drawn between actual and possible threat?
  - c) Whether there are sectors or types of company or individual that will be inherently at risk? Which?
  - d) Any evidence you have on the link between public disclosure and the consequences for individuals at risk; and the costs/impacts of those consequences?
- 14) We welcome views on:
  - a) Who should be able to make an application, including whether and when third parties should be able to apply?
  - b) The evidence requirements to support the application?
- 15) Do you think applications should be accompanied by a qualifying statement?
- 16) If yes, who should be able to make such a statement?

- 17) We welcome views on:
- Retrospective applications;
  - Prospective applications;
  - Cumulative applications; and
  - Whether 'blanket' applications should be able to be made in respect of all companies of which an individual is a PSC.
- 18) We welcome views on:
- Whether a PSC's protection should be indefinite?
  - If not, how and how often it should be renewed?
- 19) We welcome views on an appeals process.
- 20) We welcome views on a revocation process.

#### **Chapter 4: Costs and access**

- 21) We welcome views on:
- Whether the current list of public authorities is appropriate in the context of PSCs' URA information?
  - Whether the current list of public authorities should be narrowed in the context of information of PSCs at serious risk of harm?
  - If yes, who should still have access?

#### **Chapter 5: Impact of proposals**

- 22) We welcome your views on the costs and benefits of the policy changes set out in this discussion document for those identified as people with significant control, companies and other third parties. These might include:

##### *Nature of control*

- The costs of gathering and holding data on the nature of control for (i) the simpler approach and (ii) the more detailed approach; and
- The expected benefits for (i) the simpler approach and (ii) the more detailed approach.

##### *Protection regime*

- The costs for companies and individuals of familiarisation with the guidance;
  - The costs of gathering data and the type of evidence set out above and applying for the protection regime;
  - The possible numbers of applications by (i) companies and (ii) PSCs themselves;
  - The size and sectors of companies most likely to apply for protection on behalf of their PSCs;
  - Whether the degree of evidence/validation would affect the numbers of applications;
  - The expected benefits of protecting information on individuals at risk; and
  - The expected benefits of international exchange of PSC information.
- 23) Any other costs or benefits or changes in investors' or firms' behaviour associated with the proposals outlined in this document.

## Annex A: Extracts from the SBEE Bill

Provision for the PSC Register is made in clause 70 of and Schedule 3 to the Small Business, Enterprise and Employment Bill. We have included relevant extracts below to assist readers consider the policy questions in this paper.

### **Part 21A, Chapter 2 – Information-Gathering**

[...]

#### ***Section 790K – Required particulars***

(1) The “required particulars” of an individual who is a registrable person are—

- (a) name,
- (b) a service address,
- (c) the country or state (or part of the United Kingdom) in which the individual is usually resident,
- (d) nationality,
- (e) date of birth,
- (f) usual residential address,
- (g) the date on which the individual became a registrable person in relation to the company in question, and
- (h) the nature of his or her control over that company (see the specified conditions in Schedule 1A).

[...]

(5) The Secretary of State may by regulations make further provision about the particulars required by subsections (1)(h), (2)(e) and (3)(f).

(6) Regulations under subsection (5) are subject to negative resolution procedure.

### **Part 21A, Chapter 5 – Protection from disclosure**

#### ***Section 790ZE – Protection of information as to usual residential address***

(1) The provisions of sections 240 to 244 (directors’ residential addresses: protection from disclosure) apply to information within subsection (2) as to protected information within the meaning of those sections.

(2) The information within this subsection is—

- (a) information as to the usual residential address of a person with significant control over a company, and
- (b) the information that such a person’s service address is his or her usual residential address.

(3) Subsection (1) does not apply to information relating to a person if an application under regulations made under section 790ZF has been granted with respect to that information and not been revoked.

**790ZF - Power to make regulations protecting material**

- (1) The Secretary of State may by regulations make provision requiring the registrar and the company to refrain from using or disclosing PSC particulars of a prescribed kind (or to refrain from doing so except in prescribed circumstances) where an application is made to the registrar requesting them to refrain from so doing.
- (2) “PSC particulars” are particulars of a person with significant control over the company—
  - (a) including a person who used to be such a person, but
  - (b) excluding any person in relation to which this Part has effect by virtue of section 790C(12) as if the person were an individual.
- (3) Regulations under this section may make provision as to—
  - (a) who may make an application,
  - (b) the grounds on which an application may be made,
  - (c) the information to be included in and documents to accompany an application,
  - (d) how an application is to be determined,
  - (e) where an application is granted, the duration of and procedures for revoking the restrictions on use and disclosure, and
  - (f) the charging of fees by the registrar for disclosing PSC particulars where the regulations permit disclosure, by way of exception, in prescribed circumstances.
- (4) Provision under subsection (3)(d) and (e) may in particular—
  - (a) confer a discretion on the registrar;
  - (b) provide for a question to be referred to a person other than the registrar for the purposes of determining the application or revoking the restrictions.
- (5) Regulations under this section are subject to affirmative resolution procedure.
- (6) Nothing in this section or in regulations made under it affects the use or disclosure of particulars of a person in any other capacity (for example, the use or disclosure of particulars of a person in that person’s capacity as a member or director of the company).

## **Annex B: Schedule 1 to the *Companies (Disclosure of Address) Regulations 2009***

The list of specified public authorities currently able to request access to directors' URA information is contained in Schedule 1 to the *Companies (Disclosure of Address) Regulations 2009*. This list is provided below to assist readers consider the policy questions in this paper.

- The Secretary of State;
- any Northern Ireland Department;
- the Scottish Ministers;
- the Welsh Ministers;
- the Treasury;
- the Commissioners for Her Majesty's Revenue and Customs;
- the Bank of England;
- the Director of Public Prosecutions;
- the Director of Public Prosecutions for Northern Ireland;
- the Serious Fraud Office;
- the Secret Intelligence Service;
- the Security Service;
- the Government Communications Headquarters;
- the Financial Conduct Authority;
- the Prudential Regulation Authority;
- the Competition and Markets Authority;
- the Pensions Regulator;
- the Panel on Takeovers and Mergers;
- the Regulator of Community Interest Companies;
- the Registrar of Credit Unions for Northern Ireland;
- the Office of the Information Commissioner;
- the Charity Commission;
- the Charity Commission for Northern Ireland;
- the Office of the Scottish Charity Regulator;
- the Office of Communications;
- the Gas and Electricity Markets Authority;
- the Northern Ireland Authority for Utility Regulation;
- the Gambling Commission;
- the National Crime Agency;
- the Health and Safety Executive;
- the Office for Nuclear Regulation;
- the Health and Safety Executive for Northern Ireland;
- the Food Standards Agency;
- the Gangmasters Licensing Authority;
- the Security Industry Authority;
- a local authority within the meaning of section 54(2) of the Act;
- an official receiver appointed under section 399 of the Insolvency Act 1986(1) (appointment, etc, of official receivers);
- the Official Receiver for Northern Ireland;
- the Crown Office and Procurator Fiscal Services;
- the Marine Management Organisation;

- a person acting as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986(2) (meaning of “act as an insolvency practitioner”) or Article 3 of the Insolvency (Northern Ireland) Order 1989(3) (“act as an insolvency practitioner”);
- an inspector appointed under Part 14 of the 1985 Act (investigation of companies and their affairs: requisition of documents) or Part 15 of the 1986 Order or a person appointed under regulation 30 of the Open-Ended Investment Companies Regulations 2001(4) (power to investigate) or regulation 22 of the Open-Ended Investment Companies Regulations (Northern Ireland) 2004(5);
- any person authorised to exercise powers under section 447 of the 1985 Act(6) (power to require documents and information), or section 84 of the Companies Act 1989(7) (exercise of powers by officers, etc) or Article 440 of the 1986 Order;
- any person exercising functions conferred by Part 6 of the Financial Services and Markets Act 2000(8) (official listing);
- a person appointed to make a report under section 166 or 166A (reports by skilled persons) of the Financial Services and Markets Act 2000;
- a person appointed to conduct an investigation under section 167 (appointment of persons to carry out general investigations) or 168(3) or (5) (appointment of persons to carry out investigations in particular cases) of the Financial Services and Markets Act 2000(9);
- an inspector appointed under section 284 (power to investigate) of the Financial Services and Markets Act 2000;
- an overseas regulatory authority within the meaning of section 82 of the Companies Act 1989(10) (request for assistance by overseas regulatory authority);
- a police force;
- the Scottish Housing Regulator; the lead enforcement authority (as defined in section 33(1) of the Estate Agents Act 1979) exercising functions under the Estate Agents Act 1979.

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