



Department
for Business
Innovation & Skills

**THE REGISTER OF PEOPLE WITH
SIGNIFICANT CONTROL: SCOPE,
NATURE AND EXTENT OF
CONTROL, FEES, THE PROTECTION
REGIME AND WARNING AND
RESTRICTIONS NOTICES**

Government Response

DECEMBER 2015

Contents

1. Introduction	3
2. Summary of responses received	5
3. What happens next?	19
Annex 1: List of Respondents	20
How to get in touch	24

1. Introduction

1. Increasing transparency about who owns and controls UK companies is a vital step in creating an environment of trust and accountability. Under the UK G8 Presidency in 2013 the Prime Minister secured agreement from the G8 countries to sign up to ambitious proposals to tackle the misuse of companies and legal arrangements. Similar proposals have now been endorsed by the G20. Additionally, EU countries have adopted the Fourth Anti-Money Laundering Directive, which will require all EU Member States to establish their own registers of beneficial ownership by 26th June 2017¹.
2. A key element in the UK G8 Action Plan is delivery of a central registry of companies' beneficial ownership information.
 - In July 2013 the Government published a discussion paper 'Transparency and Trust: Enhancing the Transparency of UK Company Ownership and Increasing trust in UK Business'², which outlined proposals for a register of People with Significant Control (PSC register) and addressed other UK action plan commitments.
 - In October 2013 the Prime Minister confirmed that the UK's central register would be made public.
 - In April 2014 the Government published its response³ to this discussion paper.
 - In October 2014 the Government published another discussion paper⁴ which sought views on detailed technical aspects of the PSC register.
 - On 15 January 2015, having considered responses to its discussion paper, the Government announced further details about the register to Parliament⁵.
 - In March 2015 the Small Business, Enterprise and Employment (SBEE) Act 2015⁶ received royal assent and it will insert the new Part 21A into the Companies Act 2006.
3. Part 21A sets up the framework for the PSC register, which companies will be required to hold from 6th April 2016. They will need to send the information to Companies House with their confirmation statement (which replaces the annual return) or on incorporation from 30th June 2016 onwards. The registrar will maintain the PSC information in a central public register. This will mean that the central register will contain a full set of data on all UK companies in scope by July 2017. Companies House will make PSC information publicly available for free in a central register of people with significant control (PSCs).

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015L0849>

² The July 2013 discussion paper can be found under the heading 'Original consultation' half-way down this webpage: <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>

³ The April 2014 response to July 2013 paper can be found at: <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>

⁴ The October 2014 discussion paper can be found at <https://www.gov.uk/government/consultations/company-ownership-and-control-discussion-paper-on-a-public-central-register>

⁵ The written ministerial statement that can be found at: <https://www.gov.uk/government/consultations/company-ownership-and-control-discussion-paper-on-a-public-central-register>

⁶ The Act can be found at: <http://www.legislation.gov.uk/ukpga/2015/26/contents/enacted>

4. Secondary legislation is needed to implement some detailed aspects of the PSC register. In June 2015 we published a consultation paper⁷ explaining how the PSC register will work and seeking views on most of the draft regulations needed to finalise the register. We drafted the regulations with the intention of keeping the register as simple as possible for companies to comply with.
5. The draft regulations in the consultation paper covered:
 - the register’s scope – removing some companies and entities from the scope of the legislation where they already have to make information about their ownership public (part 8 and 9 of the consultation paper);
 - how the nature of control is recorded on the register – stating which of five given conditions the PSC meets and, where appropriate, indicating the extent to which the condition is met (part 10 of the consultation paper);
 - other register entries – what a company should record in its register if it has no PSC or cannot confirm information about PSCs (part 10 of the consultation paper);
 - fees – what a company may charge for providing a copy of its PSC register (part 11 of the consultation paper);
 - the protection regime – how PSCs will be able to apply to have some of their information withheld from credit reference agencies or all of their information on the PSC registers withheld from the public register if they have reason to believe they are at serious risk of violence and intimidation (part 12 of the consultation paper); and
 - how a company may seek to compel others to provide information – what a company must include in its warning and restrictions notice, what constitutes a valid reason for not complying, and the process for lifting restrictions (part 13 of the consultation paper).
6. The consultation paper also started the dialogue with interested parties about applying the PSC register to limited liability partnerships (LLPs) and Societas Europaea (SEs). We asked anyone with an interest in these issues to contact us. On the basis of that contact, we then undertook wide-ranging discussions of the policy propositions and draft regulations. We received a wide range of important and helpful contributions, through correspondence, bilateral meetings and calls, and two large workshops over summer 2015. Furthermore, the consultation paper sought views on our approach to UK companies owned or controlled by foreign limited partners and corporations sole, governments or government departments.
7. This Government response sets out the way we plan to take these regulations forward in the light of your responses to the PSC register consultation paper and other views gained through the wider consultation process. It outlines how, in light of your feedback, policy proposals have developed and been adapted since July 2015.

⁷ The June 2015 consultation paper can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/437974/bis-15-315-register-of-people-with-significant-control-consultation.pdf

2. Summary of responses received

8. In total, we received 44 responses to the consultation paper published on 19th June 2015. 19 responses were from representative bodies; one was from a government body; three were from non-governmental organisations (NGOs) - one of which was a collective response by four NGOs; five were from individuals; the other 16 responses were from private business including law firms, credit reference agencies and company service providers. This chapter summarises the views we received and sets out the Government's response.
9. Where we refer to proportions of respondents in this document, it is with reference to the total number who responded to each question (not the total who responded to any part of the discussion paper; many respondents answered only the portion of the questions of interest to them), unless otherwise stated.
10. In addition to the consultation paper we engaged businesses, representative bodies and non-governmental organisations through a stakeholder event on 9th July 2015, smaller meetings and by telephone and email to gain understanding of a wide range of views on the proposals. Since the period for receiving views formally closed, we have continued to engage with interested parties and to take their views into consideration.
11. A full list of respondents to the consultation paper and participants in the wider consultation process is included in Annex 1.

Companies not required to keep a PSC register

12. The Government believes that companies which are already required to provide substantial information about their major owners should not also be required to maintain a PSC register. For this reason UK registered companies who are required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules sourcebook (DTR5 issuers) are exempt from having to keep a PSC register.
13. The draft regulations proposed adding an exemption for UK registered companies that have voting shares admitted to trading on a regulated market in a European Economic Area (EEA) state. We do not think that these companies should have to keep a PSC register because they also already have to disclose detailed information about their ownership under the Transparency Directive.
14. In the consultation paper we asked whether the proposed exemption for UK companies listed on a regulated market in the EEA was correct and whether there are any other UK companies that should be exempt from keeping a PSC register.

Views Received

15. A clear majority of responses agreed with the proposed exemptions for UK companies that have voting shares admitted to trading on a regulated market in an EEA state (23 out of 34 responses; 7 of the 34 indicated that they were 'not sure'). Those that disagreed generally did so either because they disagree with the concept of exemptions or because they disagree with the register being made public and therefore consider the exemptions too

narrow. Those responding ‘not sure’ either gave no comments or stated that they were not familiar with DTR5 requirements.

16. Although a significant proportion of respondents felt that no other companies should be exempt, we received a number of suggestions that highlighted other disclosure regimes. In particular, four representative bodies pointed to the current exemptions for issuers under rule DTR5.11.6R of the Financial Conduct Authority’s sourcebook. This rule exempts companies with shares listed on markets in Japan, the USA, Switzerland and Israel from the requirements in Chapter 5 of the sourcebook on the basis that they are subject to equivalent disclosure requirements in relation to their major shareholders.
17. A small number of the responses suggested allowing companies to assess the equivalence of disclosure regimes themselves. In particular, the response from the Institute of Chartered Secretaries and Administrators highlighted guidance produced by the Joint Money Laundering Steering Group on assessing market equivalence.

Government Response

18. Given the strong support we received, we will exempt UK companies from having to maintain a PSC register where they have voting shares admitted to trading on a regulated market in an EEA state.
19. Following further analysis, we are satisfied that companies listed on certain markets in Japan, the USA, Switzerland and Israel are subject to sufficiently similar disclosure requirements to DTR5 issuers and that this information is publicly accessible. **We therefore intend to exempt UK companies with voting shares admitted to trading on these markets from having to maintain a PSC register.**
20. We have reviewed the suggestion that companies should be allowed to assess the equivalence of disclosure regimes themselves. On balance, we have decided that this is not appropriate and a definitive list of exempt entities is necessary given that failure to keep a PSC register will be a criminal offence. **We will include a definitive list in the regulations.**

Legal entities that are subject to their own disclosure requirements – relevant legal entities

21. Some companies are owned or controlled by other companies or legal entities. Under certain circumstances those companies which own or control another and are subject to their own disclosure requirements may be entered on that other company’s PSC register (instead of an individual).
22. The draft regulations proposed adding both UK and non-UK legal entities with voting shares admitted to trading on a regulated market in an EEA state to the list of entities that are considered to be subject to their own disclosure requirements. This would mean that, in addition to DTR5 issuers or legal entities keeping their own PSC register, UK and non-UK legal entities with voting shares admitted to trading on a regulated market in an EEA state could be entered into another company’s PSC register if they owned or controlled it (rather than an individual).

23. In the consultation paper we asked whether there are any other legal entities which are also required to report substantial information about their ownership and for details of the relevant legislation they are subject to.

Views Received

24. Respondents largely reiterated the responses they gave as to which companies should be exempt from keeping a PSC register. Additionally, two respondents suggested that it would be convenient for companies if issuers listed on any major stock exchange (which they did not define) were included in the list of entities subject to their own disclosure requirements.

Government Response

25. We will include UK and non-UK legal entities that have voting shares admitted to trading on a regulated market in an EEA state in the list of entities that are subject to their own disclosure requirements.

26. We intend to include UK and non-UK legal entities with voting shares admitted to trading on certain markets in Japan, the USA, Switzerland and Israel in the list of entities that are subject to their own disclosure requirements.

Recording the nature and extent of control

27. A person is a PSC of a company if they meet at least one of the five conditions for significant control set out in the new Schedule 1A to the Companies Act 2006. We believe requiring the register to show some information about the nature of a PSC's control will provide a clearer picture for searchers of the register. For example, it could identify majority and minority shareholders and show if a shareholder has enough control over a company to pass special resolutions (usually 75% of the voting rights in a company).

28. The draft regulations proposed requiring the register to show all of the five conditions for control a PSC meets and, where appropriate, an indication of the extent of control. For share ownership and voting rights, we proposed three broad bands to indicate whether a PSC owns more than 25% up to and including 50%, more than 50% and less than 75%, or 75% or more of the share capital.

29. In the consultation paper we asked for comments on the proposed approach for recording which condition or conditions are met and to what extent. We also asked for comments on the proposed 25% bands for share ownership and voting rights, and whether there was merit in a separate category for 100% control. We queried whether it would be simpler for companies if we required them to state the exact proportion of shares or voting rights a PSC controlled.

Views Received

30. The majority of respondents to the consultation paper commented on the nature and extent of control questions. All but four agreed with the proposed approach to recording nature of control. The four argued that the specified conditions should not be cumulative. This point was also raised at stakeholder events with particular reference to the fourth condition,

which some argued only need be checked when none of the other conditions applied. Two of the responses which agreed with the proposed approach, argued that the register would be more valuable if PSC information on all elements in a chain of ownership was on the register. One response, a joint submission from four NGOs, argued that our proposals would not be sufficient to comply with the EU Fourth Anti-Money Laundering Directive.

31. On the proposed 25% bands, there was a broadly even split of responses between those favouring the proposed approach set out in the draft regulations and those favouring narrower bands or exact percentages. Responses from those who would have their own register or advise companies on their registers favoured the proposed bands in the draft regulations. Responses from bodies that would typically search the register wanted the exact percentage to be shown on the PSC register. Across the board, there was little support for a separate 100% band.

Government Response

32. Given the strength of support, **we do not intend to change the proposed broad approach to recording nature of control on the register. However, we will change the regulations so that if a person already meets one of the first three specified conditions, the company does not have to record in its PSC register if and how the person meets the fourth specified condition.** Set against the additional burden on business, the strength of representation was not sufficient to move away from the proposed bands on share ownership and voting rights. **We will not implement a separate 100% ownership band.**

Other information to be noted on the register

33. There may be situations where a company has no PSC because there is no individual or legal entity in relation to the company who fulfils any of the five conditions for significant control. A company may also be in the situation where it does not yet have confirmed details of a PSC and therefore cannot enter information about the individual on its register. In particular, this may be where the company has investigated its ownership and is unable to put information on the register because those investigations have reached a dead end or requests for information have not been complied with.
34. The draft regulations proposed requiring companies to make a note in their register about the following circumstances if they arise:
- when a company has established that it does not have any people with significant control or registrable relevant legal entities;
 - when a company has reason to believe there are PSCs but has not been able to identify them or to get their details confirmed;
 - when the company has issued a formal request for information and the addressee has not complied within the set timescale;
 - when a company has placed restrictions on the interest in it held by a person or entity that has not complied with a formal request for information; and

- when a company does not possess information that can be placed on the register and cannot make any other note as to the progress of its investigation.

35. In the consultation paper we asked for comments on the proposed approach for requiring companies to note other information on their register.

Views Received

36. Less than half of respondents to the consultation paper commented on this issue. The majority of comments made under this question agreed with the proposed approach. Respondents understood the rationale for the extra information, felt that these notes added useful context to the register and enhanced transparency. Some observed that without such notes the value of the register would be diminished.

37. While not disagreeing with the content, some respondents found the regulations hard to understand. This point was also made in discussion with stakeholders during the consultation period.

Government Response

38. We take from the consultation responses that the categories of matters that a company should note on its PSC register, when it does not have a PSC or cannot identify them are correct. However, we recognise that the regulations should be redrafted in a way that demonstrates the intention of each category and is generally easier to follow.

39. We intend to redraft the regulations to make them easier to understand.

Fees that companies can charge for providing copies of entries in their register

40. A person may inspect a company's own PSC register (separate from the central public register) without charge and require a copy of some or all of a company's PSC register on request and for a proper purpose. The company may charge a fee for providing a copy of some or all of its register.

41. The draft regulations proposed two options for the fee. The first option was a fee calculated according to the number of entries in the company's PSC register requested. This would replicate the current fees for copies of a company's register of members. The second option was a fixed fee of £12 per request, regardless of how many entries are requested. The costs and benefits of each option were set out in the Consultation Impact Assessment 'Costs and benefits of companies making their PSC register publicly available'⁸, which was published alongside the consultation paper.

⁸ The fees Consultation Impact Assessment is available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438129/Costs_and_benefits_of_making_a_company_s_own_PSC_register_publicly_available_CIC_-_impact_assessment.pdf

42. In the consultation paper we asked respondents to indicate which fee structure they preferred and whether they felt the level of the fees are correct. We also asked whether our definition of ‘an entry’ in the register is correct.

Views Received

43. The overwhelming majority of responses (33 out of 37) preferred the fixed fee per request. Simplicity and certainty were the most commonly stated reasons for preferring the fixed fee. Only two responses preferred replicating the register of members charging regime. Of the two, one gave no reason for preferring this option and the other commented that it seemed logical to have the same fees although they still suggested a fixed fee would be simpler.

44. A number of respondents confirmed our assumption that most companies now hold their registers electronically, meaning that there is little difference in costs to the company of providing a copy of one entry or the entire register. We received no responses that disagreed with this reasoning, although one felt that companies should be able to charge an additional amount for postage costs to requesters overseas, and a second felt that companies should be able to charge an additional cost once the number of entries crossed a specified threshold.

45. The comments on the level of the fees were more mixed. Of the 35 respondents who addressed this question, 10 were unsure whether the level of the fees was correct; 15 agreed with the level of the fees and eight disagreed. Of the eight responses which disagreed with the level of the fees, seven felt that the fixed fee of £12 was too low. They suggested fees ranging from £20 to £50, citing staff costs were the main reason for increasing the fee.

46. Fewer responses commented on the definition of ‘an entry’ (28 in total; 11 responded ‘not sure’). A number of these commented that it would not be necessary to define ‘an entry’ if the fixed fee per request were implemented.

Government Response

47. **We have decided, based on the strong support from the responses, to prescribe a fixed fee per request.** We take from the responses to the discussion paper that this approach is appropriate, given the general trend towards digital communications.

48. We have considered whether the £12 fee is too low. We conducted further surveys of companies and trust and company service providers to help us estimate the costs to companies of providing a copy of their PSC register. These costs and the results of the surveys are set out in the Final Impact Assessment on the ‘Costs and benefits of making a company’s own PSC register publicly available’. The responses to our surveys have confirmed that £12 is an appropriate fee.

49. **We therefore intend to implement a fixed fee of £12 per request for a copy of a company’s PSC register or any part of it (regardless of how many parts are required to be copied).**

The protection regime

50. It will be possible to apply to have all or some of the information about a PSC withheld from the public register or from being shared with credit reference agencies (CRAs) if the PSC is at serious risk of harm.

51. The draft regulations proposed a protection regime for individuals at serious risk of violence or intimidation as a result of the activities of the company or as a result of that person's identity taken together with their association with the company). These draft regulations cover the processes in which a PSC can apply for protection from having their usual residential address disclosed to CRAs or can apply to have their wider PSC information protected from disclosure to the public.

52. In the consultation paper we asked:

- Whether the process for protecting residential addresses from credit reference agencies is appropriate and complete.
- Whether the process for protecting wider PSC information (referred to in the draft regulations as “secured information”) is appropriate and complete.
- Whether the grounds for making an application are clearly defined.
- Whether the transitional arrangements are appropriate.
- Whether the 28 day limit for an individual to cease to be a PSC is appropriate.

Views Received

53. There was an overwhelmingly positive response to the process for protecting residential addresses from CRAs, including from the CRAs themselves. Respondents approved of modelling the process on the current system for protecting company directors' usual residential address (“directors' regime”), given its success. However, a few technical points were raised. Notably, it was queried why information is made available to CRAs at all. Others asked whether individuals with existing protection in their capacity as company directors could have their residential addresses automatically protected as PSCs, to reduce burdens on business.

54. There was strong consensus that the protection of all PSC information, as a whole, was necessary. However, some respondents asked for more detail on the assessment of protection applications. Civil society respondents, in particular, had specific views that the public interest test must be stringently applied as part of the assessment process.

55. All stakeholders welcomed the Government's policy intention that only individuals who are genuinely at risk of violence or intimidation should be granted protection. Although some stakeholders, from across the spectrum, asked for more clarity on the grounds for making an application. The business community, for example, was concerned whether the grounds, as defined, could be understood by a typical PSC in the first instance. Civil society suggested making clear there should be an increased risk to the individual were their

information to be publicly available on the PSC register (rather than a separate precondition of risk of physical harm, irrespective of the register).

56. There was general recognition that transitional arrangements would be useful and that those set out in the draft regulations are appropriate. However, responses were mixed to the proposal of a 28 day limit during the transitional period for an individual to cease to be a PSC. Some agreed that 28 days is an adequate length of time, while others, predominately from industry, disagreed and suggested three to at least six months to allow sufficient time for the individual to divest their interests in the company. In their view, it is not easy to divest interests in a private company; a company's size and nature of business were cited as key factors that make divesting difficult. In addition to the formal consultation, we also engaged with two large business representative bodies, for and against our 28 days proposal, to further understand the complexities of what an individual would need to think through and carry out in order to cease to be a PSC.

Government Response

57. Given the strong support we received for the proposals, **we intend to proceed with the process for protecting PSCs' residential addresses as set out in the draft regulations.** We will also update the directors' regime regulations so that the two sets of processes are operationally aligned and where an individual is both a company director and a PSC the protection applies across the company directors' register and the PSC register. By the same rationale, we believe there could be merit to further reflect on how protection could work across entities other than companies, in due course.
58. We have also looked into the major UK CRAs' relationship with the directors' regime, as a proxy for the proposed PSC protection. We have found that there is compelling evidence that CRA access to information on companies, including on PSCs, is important to the small business lending environment.
59. Given the strong consensus, **we also intend to put in place the proposed application process for protecting secured information.** We believe that establishing grounds for the protection threshold will create a fair and consistent approach. **We also intend that in the assessment process, the registrar will be able to seek advice on the nature or extent of the risk of violence or intimidation ("physical harm") from any authority as he deems fit.** Our understanding, from all of our focus group discussions with representative bodies, the civil society, credit reference agencies, and law enforcement, is that a protection regime without independent scrutiny would not be effective.
60. Discussions on the operational and costs aspects of assessing applications with potential authorities are already underway, and the National Crime Agency (NCA) has agreed to be involved in the assessment process. The expertise in risk assessment from the NCA, and others in that field, such as the intelligence services, will ensure that assessments are structured, consistently applied, and robustly interrogated.
61. Given support for the Government's policy intentions, **we will implement protection for individuals on the grounds of serious risk of violence or intimidation due to the company's activity, or, to the circumstances specific to an individual PSC and their link to the company.** Where the individual could suffer physical harm stemming from something other than their PSC status, alternative support from the police and others would be available to them.

62. We agree that clear and comprehensible information on the protection regime is essential to ensuring its effectiveness. **We will therefore provide clear guidance explaining the protection regime to help companies understand whether an application can be made for a PSC of their company.** The guidance will complement detailed guidelines for those completing protection applications to be published by Companies House. We believe that a protection regime which works well in practice is integral to the success of the PSC register. **We, therefore, intend to include the protection regime as part of the statutory review due to take place in 2019.**
63. Having considered evidence from both sides of the discussion, **we have extended the 28 day limit during the transitional period for an individual to cease to be a PSC to 12 weeks.** By extending this period, we believe individuals will be able to comfortably take the necessary steps to divest interests in a company.

Warnings and restrictions notices

64. A company may seek to compel others to provide information by restricting an interest in the company, if the person with the interest has not responded to a request for information. Before restricting an interest, the company must first send a warning notice, followed by a restrictions notice.
65. The draft regulations proposed that a valid reason for not responding to company requests for information for the PSC register might be a person's incapacity. The draft regulations also set out what information must be in the warning and restrictions notices.
66. In the consultation paper we asked whether the mandated content of the warning and restrictions notices is useful and whether the notices are too detailed and if there are elements that could be omitted. We also asked for comments on whether capacity to respond should be the only factor a company must take into account in considering reasons for non-compliance.

Views Received

67. Over three quarter of respondents commented on these questions. There was strong support for the policy as set out in the regulations. The content prescribed in the regulations was also strongly supported. The approach on valid reasons for non-compliance which allows companies to take any factor into account, but only mandates the company to consider capacity to respond, was heavily backed.

Government Response

68. Given the level of support **we do not intend to amend the policy.**
69. **We will provide sample draft notices as part of the guidance to business on the PSC register requirements.**

Foreign limited partnerships holding shares or rights in a UK company

70. Where an English limited partnership holds shares or rights in a UK company, limited partners that do not take part in the management of that limited partnership will not meet the first three conditions for significant control just by virtue of being a limited partner. This is because we do not want to record on the register the potentially hundreds of limited partners who have no ability to control their limited partnership as this information would be misleading.
71. Regulations are needed to also apply this provision to foreign limited partnerships. In the consultation paper we asked interested parties to contact us if they wished to make a contribution to the development of these regulations.

Views Received

72. We were contacted by several law firms and a representative organisation with an interest in these particular regulations. They contributed comments on the technical detail of our definition of a 'foreign limited partner'.

Government Response

- 73. The regulations will apply this provision to participants in foreign arrangements similar to limited partners in an English limited partnership, who do not take part in the management of that arrangement.**

Corporations sole and others

74. Under the PSC legislation, corporations sole, governments or government departments, international organisations and local authorities will be treated as if they were individuals. Regulations are needed to ensure that the PSC register provisions which apply to individuals will apply appropriately to these organisations.
75. In the consultation paper we asked interested parties to contact us if they wished to make a contribution to the development of these regulations.

Views Received

76. We were not contacted by any interested parties following the consultation paper. We have developed these regulations through discussions with other government departments.

Government Response

- 77. The regulations will apply the PSC register provisions relating to individuals appropriately to these organisations.**
78. Companies will not be required to seek confirmation of the details of the corporation sole, government body etc. from that organisation before entering its information on the PSC register. In this respect, corporations sole, etc. are treated as entities not individuals: companies are not required to confirm the details of relevant legal entities before they are

entered on the register. Our view is that to require companies to confirm this information with a corporation sole, etc. would be an unnecessary burden.

Societas Europaea

79. UK registered Societas Europaea (SEs) will be required to keep a PSC register under the new Part 21A of the Companies Act. They are generally subject to the same laws as public limited companies except, for instance, in relation to their formation. As such, regulations are needed to modify some of the legislation to ensure that the law is effective in its application to SEs.
80. In the consultation paper, we asked any interested parties to contact us if they wished to contribute views on how best to extend the PSC provisions to SEs.

Views Received

81. We did not receive any requests from SEs or other interested parties to engage in the development of the SE regulations following the consultation paper.
82. In June 2015 we also sought views on the draft SE regulations from stakeholders directly by email and the proposals were discussed at the consultation stakeholder event on 9th July 2015. Additionally, in August 2015, Companies House (on behalf of the Department for Business, Innovation & Skills) wrote to all of the active SEs registered in the UK, advising them of the proposals and inviting them to give comment. Again there was no interest.

Government Response

83. We have developed draft regulations that:
- require anyone forming an SE to send a statement of initial significant control to Companies House alongside other documents needed to form an SE in the UK;
 - extend section 241(1)(b) of the Companies Act 2006 to allow SEs to deliver usual residential address information to Companies House;
 - modify references to ‘incorporation’ so that they read as ‘registration’- this is because some SEs are formed by changing existing entities; and
 - modify references to ‘subscribers to a memorandum of association’ to ‘signatories of a statement of proposed members’, so that when forming an SE a signatory to a statement of proposed members can make an application on behalf of a PSC to have that PSC’s residential address information protected from disclosure to credit reference agencies or for their wider PSC information protected from public disclosure.
84. In the absence of any adverse comments, **we intend to take forward these regulations as proposed. They will come into force at the same time as the regulations for companies.**

Limited liability partnerships

85. We intend to apply the PSC regime to limited liability partnerships (LLPs) on the same timeframe as companies, as stated in the Government response⁹ to the July 2013 Transparency and Trust discussion paper¹⁰. To do this, we will make separate regulations to apply the PSC register provisions for companies (including those inserted into the Companies Act 2006 by the SBEE Act 2015 and the regulations discussed in this document) to LLPs with any necessary modifications.

86. We intend that the regime should operate for LLPs in the same way as it does for companies, as far as is appropriate. LLPs should have the same obligations and tools as companies to identify their PSCs, and the PSCs of LLPs will have the same obligations as the PSCs of companies. Access to (and where necessary suppression of) PSC information will apply with respect to LLPs as it does to companies. However, there are differences between companies and LLPs which must be accounted for.

87. In the consultation paper, we asked any interested parties to contact us if they wished to contribute views on how best apply the PSC regime to LLPs.

Views Received

88. We were contacted by a range of representative organisations and received many valuable contributions in subsequent meetings, workshops and written submissions.

89. These contributions explored some features of LLPs relevant to application of the PSC regime to them. Notably, LLPs do not have shares or directors or the same sort of voting rights as companies. There are consequences, for example, in the restrictions regime and the application of criminal offences. We heard that modifications are required to the five conditions for significant control in order to apply the PSC regime to LLPs - it was on this topic that we received most contributions.

Government Response

90. On the basis of the contributions we received, we currently propose that the conditions for significant control of an LLP should be based on :

- rights over surplus assets on winding up;
- voting rights in an LLP, in terms of rights conferred on members in relation to matters to be decided by a vote of the members;
- rights to appoint or remove the majority of those involved in management of the LLP;
- other significant influence or control, to be explained in statutory guidance. (Statutory guidance will cover a number of bespoke points for LLPs; for instance, we are

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304297/bis-14-672-transparency-and-trust-consultation-response.pdf

¹⁰ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212079/bis-13-959-transparency-and-trust-enhancing-the-transparency-of-uk-company-ownership-and-increasing-trust-in-uk-business.pdf

currently minded to cover rights over profits, which we heard were a good proxy for significant influence and control).

91. In light of the views received, **we intend to take these regulations forward to ensure that the PSC regime applies to LLPs as it does to companies in 2016.**

Impact assessments

92. Throughout the development of the PSC register, we have striven to ensure that we keep the burden on companies to a minimum. Our aim has been to keep the obligations as simple as possible without compromising the operation and utility of the register.
93. In developing the register we have encouraged companies to comment on our assessment of how much compliance with the new regime will cost them. A full assessment of the costs was presented in the impact assessment (IA) for the SBEE Act 2015 that was approved by the RPC in April 2014¹¹. An enactment assessment updating this was published alongside the consultation paper.
94. Alongside the consultation paper we published consultation costs and benefits IAs covering the protection regime and companies making their own register publicly available (fees IA). The net cost to business of the protection regime is estimated at £4.7m per year. We believe that these costs are outweighed by the potential non-monetised benefits, such as not deterring investment in the UK. The fees IA primarily covers what a company may charge for providing a copy of its own PSC register. Our preferred option is a flat rate fee of £12 per request. The estimated net cost to business for this option is £10.1m per year. We believe this option strikes a fair balance between allowing a company to recover the reasonable costs it incurs in providing a copy of its PSC register, and ensuring that these costs do not pose a barrier to those wanting to access the information.
95. In the consultation paper we asked for comments on the IAs covering the protection regime and the costs of making registers publicly available.

Views Received

96. Less than half of the responses we received to the consultation paper chose to comment on the IAs. Those respondents commented on the fees IA generally took this as an opportunity to express their preference for the £12 fee per request. Notably, the Association of Company Registration Agents suggested that the Government's estimate of the number of trust and company service providers keeping statutory registers (such as the register of members) on behalf of other companies is probably high.
97. Most comments on the protection regime impact assessment were positive. Some who were concerned about the IA thought that neither the costs nor the benefits could be quantified purely by extrapolating to make information from other proxy sources. They were also of the view that the assumptions around 100% compliance; applications made by

¹¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434546/bis-15-320-enhanced-transparency-of-company-beneficial-ownership-enactment-impact-assessment.pdf

sensitive sectors, such as defence; and costs for smaller business of the owner-manager model could be misleading and or overstated.

Government Response

98. The outcome of the consultation has been used to inform both the protection regime and the fees IAs. In addition, further surveys of companies, law enforcement, credit reference agencies, NGOs and company service providers have been 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. We have attempted to further refine the methodology and any unavoidable limitations of the analysis have been duly highlighted.
99. **Updated final IAs will be published alongside the final set of regulations.**

3. What happens next?

The People with Significant Control Regulations

100. We intend to lay the People with Significant Control Regulations before Parliament in January 2016.
101. Companies and SEs will be required to keep a PSC register from 6th April 2016. They will need to send the information to Companies House with their confirmation statement (which replaces the annual return) or on incorporation, from 30th June 2016 onwards.
102. We intend to lay regulations to bring LLPs into the PSC regime alongside companies.

Guidance on the register of People with Significant Control requirements

103. We intend to publish a finalised version of the guidance for companies, LLPs and PSCs on the register of People with Significant Control requirements on GOV.UK in January 2016.

The Fourth Anti-Money Laundering Directive

104. The EU Fourth Anti-Money Laundering Directive¹² (4AMLD) was adopted in June 2015. It requires Member States to use central registers to hold beneficial ownership information for legal entities incorporated in their territory. The UK has been ahead of other Member States in creating its own central register; however the Directive will require the UK regime to develop.
105. The 4AMLD covers a range of policy areas across Government; work on transposition is led by HM Treasury who propose to consult in due course. BIS intends to seek views as necessary on some developments of the PSC register in order to be compliant with the Directive, for implementation mid-2017.

Reviewing the PSC register requirements

106. The Government intends to consider the regulations in 2019 as part of its obligation to review the register of people with significant control provisions under Part 21A of the Companies Act 2015.

¹² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015L0849>

Annex 1: List of Respondents

Respondents to the consultation paper:

Alternative Investment Management Association (AIMA)
Association of British Insurers (ABI)
Association of Company Registration Agents (ACRA)
Association of Investment Companies (AIC)
Baillie Gifford & Co.
Bircham Dyson Bell LLP
British Banking Association (BBA)
British Private Equity and Venture Capital Association (BVCA)
Business Information Providers Association (BIPA)
Capita Asset Services
Chancery Bar Association
Christian Aid, Global Witness, ONE and Publish What You Pay UK
City of London Law Society - Company Law Committee
Co-operatives UK
Deloitte LLP
DLA Piper LLP
Dun & Bradstreet
Easton Oxford Corporation
Equifax
Equiniti David Venus Ltd.
Experian
FCLS Group Ltd.

Federation of Small Businesses (FSB)

General Counsel 100 (GC100)

Insolvency Practitioners Association

Institute for Family Business

Institute of Chartered Accountants in England and Wales (ICAEW)

Institute of Chartered Secretaries and Administrators (ICSA)

Jordans Trust Company Ltd. and Jordans Corporate Law Ltd.

Law Society - Company Law Committee and the Anti-Money Laundering Task Force

Lodders Solicitors LLP

MSP Chartered Secretaries

Oakwood Corporate Services Ltd.

Open Corporates

The Quoted Companies Alliance (QCA)

Serious Fraud Office (SFO)

Society of Trust and Estate Practitioners (STEP)

Transparency International

Unite Students

We also received five responses from individuals.

Participants in the wider consultation process:

ADS Group Ltd.

Alternative Investment Management Association (AIMA)

Association of Company Registration Agents (ACRA)

Association of Partnership Practitioners (APP)

Berwin Leighton Paisner

British Banking Association (BBA)

British Private Equity and Venture Capital Association (BVCA)

Brodies LLP

Capita Asset Services

City of London Law Society - Financial Law Committee

City of London Law Society – Company Law Committee

City of London Police

Chartered Institute of Taxation

Creditsafe

DLA Piper

Dun & Bradstreet

Equifax

Ernst & Young LLP

Experian

Federation of Small Businesses (FSB)

General Counsel 100 (GC100)

Global Witness

Graydon UK Ltd.

Institute of Chartered Accountants in England and Wales (ICAEW)

Institute of Chartered Secretaries and Administrators (ICSA)

Institute of Directors

Jordans Trust Company Ltd. and Jordans Corporate Law Ltd.

Law Society - Anti-Money Laundering Task Force

Law Society - Company Law Committee

Law Society - Tax Committee

Linklaters LLP

Metropolitan Police

National Crime Agency (NCA)

Open Corporates

Privacy International

Slaughter and May

Society of Trust and Estate Practitioners (STEP)

Solicitors Regulation Authority (SRA)

Stanley Davis Group

Stikeman Elliot

Taylor Wessing LLP

The Asset Based Finance Association (ABFA)

The Bioindustry Association

The Quoted Companies Alliance (QCA)

Transparency International

Weil, Gotshal and Manges

For information on the parties involved in the surveys on the protection regime and fees please see the relevant impact assessments.

How to get in touch

Please contact transparencyandtrust@bis.gsi.gov.uk clearly stating the subject of your email.

In exceptional circumstances we will accept correspondence in hard copy. If you need to submit a hard copy, please provide two copies to the Corporate Governance team, Business Environment directorate at the following address:

Transparency & Trust
Corporate Governance
Business Directorate
1 Victoria Street
London
SW1H 0ET

We regret that we are not able to receive faxed documents.



© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available from www.gov.uk/bis

Contacts us if you have any enquiries about this publication, including requests for alternative formats, at:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000
Email: enquiries@bis.gsi.gov.uk

BIS/15/622