

Delegated Powers and Regulatory Reform Committee

Draft Registration of Overseas Entities Bill

Memorandum by BEIS

Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee. The memorandum identifies the provisions of the Bill which confer powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.
2. Each measure in the Bill is addressed individually. The material for the Memorandum was prepared by the Department for Business, Energy and Industrial Strategy (BEIS).

Overview of the Bill

3. The Registration of Overseas Entities Bill (the “Bill”) establishes a register of overseas entities, in which an overseas entity can apply to be registered by providing details about itself and its beneficial owners. While registration is *prima facie* voluntary, the Bill provides that not doing so will result in: (i) an overseas entity being unable to register as proprietor of land in the UK (critical for obtaining full legal title) via the three Land Registries, and (ii) certain dispositions made by an overseas entity registered proprietor being incapable of registration at the Land Registries.
4. Clauses 1 to 14 create the register and the framework in which an overseas entity can apply to be registered. Once registered, an overseas entity is required to update annually until such time as it successfully applies to be “removed” from the register. The application will require the overseas entity to disclose information about itself and its beneficial owners, having first taken steps to identify its beneficial owners.
5. The register will be held by the registrar of companies and will be, for the most part, accessible to the public. Clauses 17 to 27 replicate a number of functions and powers contained in the Companies Act 2006 (“the Act”) pertaining to the registrar in relation to the register it keeps for UK companies.
6. Schedule 1 to the Bill sets out the information required about an overseas entity, its beneficial owners, and where required, its managing officers for the purposes of the application to register and the updating requirements.
7. Schedule 2 to the Bill sets out “who” is a beneficial owner of an overseas entity. This is modelled on the “People with Significant Control” (PSC) Regime for UK companies set out in Part 21A of, and Schedule 1A to, the Act.
8. Part 1 of Schedule 3 to the Bill inserts new “Schedule 4A” into the Land Registration Act 2002 (“LRA 2002”). Schedule 4A provides that no application may be made to register an overseas entity as proprietor of a “qualifying estate” (a freehold estate or a leasehold estate of over 7 years), unless the overseas entity is a “registered overseas entity” at the time of the application (or is exempt). For these purposes, an overseas entity will not be a “registered overseas entity” unless it has registered on the overseas entity register and has complied with the update requirement.
9. Where an overseas entity is registered as proprietor of a qualifying estate, Schedule 4A requires HM Land Registry for England and Wales (“HMLR”) to insert a restriction into the title

register for the estate. The restriction will prohibit the registration of certain dispositions in respect of the estate unless the entity is a registered overseas entity (or is exempt) at the time of the disposition. The dispositions are (a) a transfer of the estate (i.e. sale); (b) the grant of a lease of over 7 years out of the estate; and (c) the creation of a charge over the estate.

10. When land is sold to a person, it is legally possible for that person to make dispositions in respect of the land before being registered as the proprietor. Schedule 4A therefore also prohibits the registration of the dispositions mentioned above made by an overseas entity in these circumstances.
11. Both the restriction and the prohibition on registration are subject to exceptions, aimed at protecting third party rights. An overseas entity that makes a disposition which cannot be registered by virtue of the restriction or prohibition against registration (as the case may be) will be guilty of a criminal offence.
12. Part 2 of Schedule 3 provides for a transitional regime for certain overseas entities that are registered proprietors of qualifying estate when the Bill comes into force. These entities will have 18 months from the commencement date in which they can register as an overseas entity or dispose of the land if they choose to. If, at the end of that period, the overseas entity remains the registered proprietor of the estate and has not registered in the overseas entities register, it will have committed an offence. HMLR is also required to insert the restriction described above into the title registers of these estates, which will come into effect at the end of the transitional period.
13. Schedule 4 to the Bill amends the Land Registration Act etc. (Scotland) Act 2012. It inserts new Schedule 1A into the Act which makes equivalent provision as Schedule 4A described above in respect of Scotland, subject to existing differences in land registration in Scotland. The key difference is that, while the requirements will apply to some overseas entities that are existing registered proprietors of qualifying estate at the time of commencement, it is limited to those entities that registered from 8 December 2014 (rather than 1 January 1999 in England and Wales). This is the relevant date on which the Registers of Scotland (the equivalent to HMLR) began to record whether or not a registered proprietor was an overseas entity.
14. Schedule 5 to the Bill inserts Schedule 8A into the Land Registration Act (Northern Ireland) 1970. Schedule 8A makes provision equivalent to Schedule 4A described above in respect of Northern Ireland, again subject to existing differences in land registration in Northern Ireland. The key difference is that the requirements will only apply to new purchases by overseas entities on or after the commencement date; those which are existing registered owners of land in Northern Ireland are not in scope due to the lack of information held about those entities by the Northern Ireland Land Registry currently.

Territorial coverage

15. Clauses 1 to 39 (other than clauses 29(1) - 29(3)) of, and Schedules 1 and 2 to the Bill apply and extend to England and Wales, Scotland and Northern Ireland. Schedules 3, 4 and 5 make amendments to the applicable land registration legislation in each of the three jurisdictions. Section 29(1) and Schedule 3 extend to England and Wales only. Section 29(2) and Schedule 4 extend to Scotland only. Section 29(3) and Schedule 5 extend to Northern Ireland only. The intention is for the regime to work as consistently as possible across the UK subject to the differences in land registration requirements that currently apply. BEIS has been liaising with Scotland and Northern Ireland officials and the relevant Land Registries as appropriate.

Devolution

16. The powers conferred by the Bill are exercisable in the devolved areas.

Provisions which confer delegated powers

17. The Bill contains fifteen delegated powers, three of which are Henry VIII powers. The provisions in the Bill which confer these powers are identified below. The purpose of the delegated powers taken, and an explanation as to why the matter is to be left to delegated legislation and why BEIS has chosen a particular procedure, are then set out in relation to each relevant clause.

Clause 4: Power to specify additional matters that must be included in an application for registration by an overseas entity

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

18. Clause 4 sets out the details and statements that an application by an overseas entity for registration delivered to Companies House must contain, including particulars about its beneficial owners. An overseas entity might not be able to provide complete information about its beneficial owners at the time it applies for registration. In these circumstances, the entity will nevertheless be allowed to register if it can provide information about its managing officers.

19. Many of the clauses which establish the overseas entities register are based on the framework established under the PSC Regime in Part 21A and Schedules 1A and 1B to the Act, which requires UK companies (and other UK entities) to hold their own registers of information about their PSC, and to disclose that information to Companies House. In the context of the PSC regime, section 790M(7) of the Act enables the Secretary of State by regulations to require “additional matters to be noted in a company’s PSC register”. Part 4 of the Register of People with Significant Control Regulations 2016 sets out additional information to be included in a company’s register of persons with significant control where there are no registrable persons, there is an unidentified registrable person, there are unconfirmed details of a registrable person, a company’s investigations are ongoing and where there have been failures to comply with requirements to provide information under sections 790D and 790E of the Companies Act 2006. A similar power has therefore been drafted in the Bill to specify in regulations additional matters that must be noted in respect of the overseas entities’ application for registration.

Justification for delegation

20. It is appropriate to include, in the context of the overseas entities regime, a power similar to the existing power under section 790(M)(7) of the Act to “require additional matters to be noted in the company’s PSC register”.

21. In a scenario where an overseas entity is not able to provide the particulars set out in the Bill, we may use this power to prescribe additional matters in relation to which the overseas entity has to provide information – for example, details about the notices it has sent as part of its reasonable steps to identify its beneficial owners. This level of detail is ancillary to the main application requirements set out in clause 4 and therefore more appropriate to be contained within secondary legislation. Moreover, a power to prescribe additional matters will allow this element of the policy to

be kept under review in light of, for example, changing circumstances and if the Government identifies the need to add or remove from the matters prescribed.

Justification for the level of parliamentary scrutiny

22. Regulations made under this section are subject to the negative resolution procedure. BEIS considers that the negative procedure provides a suitable level of scrutiny as the additional detail will reflect the content of the primary legislation. For example, the requirement for the overseas entity to take reasonable steps to identify its beneficial owner is set out in clause 11, which includes the sending of notices to a person the entity thinks might be its beneficial owner or a person who might know the identity of the entity's beneficial owner. Therefore, regulations made under this power to require the overseas entity to provide in its application details about the notices it has sent under those provisions will reflect what is in the primary legislation. Negative resolution is the procedure also prescribed in relation to the precedent power under section 790(M)(7) of the Act.

Clause 7: Power to amend section 4 *Updating duty* for the purpose of changing the update period

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument (also includes Henry VIII power)

Parliamentary procedure: Affirmative resolution

Context and purpose

23. Clause 7 requires a registered overseas entity to update the statements and information it has provided to the registrar on an annual basis. To do this, the entity can deliver to the registrar the statement and information listed in clause 4 (information and statement to be delivered in an application for registration as an overseas entity). The overseas entity may, instead of re-delivering the same statement and information, confirm the statement and information delivered previously. Subsection (6) confers a power on the Secretary of State, by regulations, to amend the update period either to extend it or shorten it.

Justification for delegation

24. The Government appreciates that this is a Henry VIII power but believes that it is necessary to maintain flexibility to amend the update period if in practice it causes unnecessary disruption to the conveyancing process or it becomes clear that annual updates are not suitable for enforcement purposes. It is possible it will prove that a shorter update period would be more beneficial in meeting the policy objectives of holding up to date information on the beneficial ownership of entities engaged in land transactions in the UK. In such circumstances, it is appropriate to amend the update period without using primary legislation. A precedent for this power can also be found in section 853K(1) of the Act which allows the Secretary of State to make regulations which amend or repeal the provisions of section 853A of the 2006 Act relating to the annual confirmation statement required of UK companies (which replaced the annual return), including the provisions therein on the length of the 12-month review period (subsection (5) of section 853A of the 2006 Act).

Justification for the level of parliamentary scrutiny

25. Regulations made under this section are subject to the affirmative resolution procedure. BEIS is of the view that it is appropriate and right that Parliament should debate and approve any changes made to the update period.

Clause 13: Sections 11 and 12: supplementary: Power to make further provision in regulations about giving notices

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

26. Clause 11 requires an overseas entity to take reasonable steps to identify its registrable beneficial owners prior to making an application, complying with the annual update requirement, or when providing up to date information in its application to remove itself from the list of overseas entities. The steps that an overseas entity must take include giving an information notice to any person that it knows, or has reasonable cause to believe, is a registrable beneficial owner in relation to that entity.
27. Under section 12, a notice may also be issued by the overseas entity to a person who knows the identity of its registrable beneficial owner.
28. Clause 13 allows the Secretary of State by regulations to make further provision about the giving of notices under section 11 or 12, including provision about the form and content of any such notices and the manner in which they must be given. The requirement for an overseas entity to take reasonable steps to identify its beneficial owner and the requirement or power (as the case may be) to send notices is closely modelled on the PSC regime (see section 790D of the Act). There is an existing power in section 790D(9) of the Act to make further provision about giving of notices, including the form and content of any such notices and the manner in which they must be given.

Justification for delegation

29. The level of detail required to be set out in notices is more appropriately contained in secondary legislation than primary, in line with other similar provisions in the Act (including section 790D(9)). This is beneficial in order to retain a degree of flexibility in what is to be prescribed in the notices.

Justification for the level of parliamentary scrutiny

30. Regulations made under this section are subject to the negative resolution procedure. This procedure is appropriate as the notice (and therefore the regulations) will reflect the content of the primary legislation, which will have been subject to full Parliamentary scrutiny.

Clause 15: Power to modify application process etc. in certain cases

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

31. Clause 15 confers a power on the Secretary of State to make regulations which modify the application or update requirements in relation to an application for registration in the overseas entities register made by a description of overseas entity specified in the regulations. The application or update requirements may be modified in relation to a description of overseas entity only if the Secretary of State considers that the modifications are appropriate in the light of

information that is publicly available about such entities. The regulations may make such modifications to the Act as are consequential on those regulations.

Justification for delegation

32. A power to make regulations which modify the application or update requirements in relation to applications made by a description of overseas entity specified may be necessary in a variety of circumstances. In particular, the Government envisages using this power in relation to entities that already disclose beneficial ownership information to a register in their own country, e.g. due to a national requirement or by virtue of having voting shares listed on a regulated market. In such cases, the regulations made under this power may modify the application or update requirements in respect of those entities so that they will not have to provide beneficial ownership information again provided the information is available in a public register in their own country of formation. This modification could potentially have in scope all EU-incorporated companies; since the implementation of the 4th Anti-Money Laundering Directive, all companies incorporated in the EU have been required to obtain and disclose information about their beneficial ownership to a central register in their relevant Member State of incorporation (now required, under the 5th Anti-Money Laundering Directive, to be publicly accessible).
33. The power to modify the application requirements may also be appropriate if it comes to light there is a type of overseas entity in scope of the requirements in relation to which the default application or update requirements are not suitable. In this case the power will allow the Government the flexibility to modify the application requirements accordingly, provided the Secretary of State is satisfied that information about the entity is publicly available elsewhere.
34. The power to make consequential provisions in regulations that modify the Act is necessary to ensure that modifications that are consequential to modification of the application requirements can be made – if an overseas entity need not provide information about its beneficial owners, the requirement under clause 11 to take reasonable steps to identify any registrable owners and obtain information about them also needs to be modified or “switched off”.

Justification for the level of parliamentary scrutiny

35. Regulations made under this section are subject to the negative resolution procedure. This procedure is appropriate as the power is relatively narrow and the provisions indicate the cases in which the power will be used (i.e. cases where information is already publicly available) and the regulations will reflect the content of the primary legislation, which will have been subject to full Parliamentary scrutiny.

Clause 18: Power to make regulations which authorise or require the registrar to annotate the register

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

36. Clause 18 provides for annotation of the overseas entities register to record (i) the date on which a document is delivered to the registrar, (ii) that a document has been replaced and the date of delivery of the replacement, and (iii) that certain content has been removed from the register. Subsection (2) confers a power on the Secretary of State to make provision in regulations

authorising or requiring the registrar to annotate the register in such other circumstances as may be specified in the regulations and as to the contents of any such annotation.

Justification for delegation

37. While the overseas entities register will be held by the registrar of companies, the provisions relating to the overseas entities register will sit in a standalone Act of Parliament rather than be incorporated into the Act, which is chiefly concerned with UK companies. Because of the fact the provisions will sit outside the Act, a number of provisions relating to the registrar's functions and powers in Part 35 of the Act have had to be replicated in the Bill. Power to authorise or require the registrar (Companies House) to annotate the register in such circumstances as may be specified in regulations is therefore akin to the existing power under section 1081(2) of the Act and needs to be replicated in the Bill. The power is currently used, for example, to enable Companies House to annotate the register in order to remedy material that might be misleading or confusing to the viewer. BEIS is of the view it is appropriate that this level of detail be set out in secondary legislation.

Justification for the level of parliamentary scrutiny

38. Regulations made under this section are subject to the negative resolution procedure. This procedure is appropriate as the regulations will reflect the content of the primary legislation, which will have been subject to full Parliamentary scrutiny.

Clause 21: Power to make provision specifying conditions for the disclosure of protected information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

39. Clause 20(1) provides that protected date of birth and residential address information must not be disclosed except as permitted. This information, while required in relation to a beneficial owner/managing officer of an overseas entity, will not form part of the material on the register that is open to public inspection. However, the registrar may disclose both types of protected information to any person or body who has functions of a public nature and is specified by regulations. This is to ensure that contracting authorities, law enforcement and other public authorities have access to this information as appropriate. Subsection (3) of clause 21 gives the Secretary of State the power to make regulations in relation to disclosure to a public authority of protected date of birth information or residential address information. This power is again based on similar powers in the Act – see section 243(3) (which is applied by extension through section 790ZF for the PSC regime) in relation to usual residential addresses and section 1087B(2) in relation to date of birth information.

Justification for delegation

40. This level of detail is more appropriate to be contained in secondary legislation and will allow flexibility in the event of changing circumstances e.g. should the list of specified public authorities that can access the information need to be updated or in the event the conditions for access need amendment. The equivalent regulations made under the powers mentioned above in the Act (the Companies (Disclosure of Address) Regulations 2009), have had to be continuously updated so as

to ensure the list of public authorities that can access this information on request (set out in Schedule 1 to those Regulations) is correct.

Justification for the level of parliamentary scrutiny

41. Regulations made under this section are subject to the negative resolution procedure. Additional parliamentary scrutiny is not considered necessary since the core framework is set out in primary legislation. This is in line with the existing precedents in sections 243(8), 790ZF and 1087B(3) of the Act.

Clause 22: Power to protect other information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

42. Clause 22 provides that the Secretary of State may by regulations make provision requiring the registrar, on application, to make information relating to a relevant individual unavailable for public inspection, and to refrain from disclosing that information or to refrain from doing so except in specified circumstances. Regulations may make provision as to who may make an application, the grounds on which an application may be made, the information to be included in and documents to accompany an application, how an application is to be determined, the duration of restrictions granted and procedures for their revocation etc (see subsection (3)).

43. This power is necessary as there may be circumstances in which all of a person's personal information should be suppressed from the public register, e.g. where a person is at serious risk of violence or intimidation as a result of being of the overseas entities register. This power is akin to the power in section 790ZG of the Act, which in turn is modelled on that in sections 240 and 243 (which allows regulations to be made suppressing some directors' details in similar circumstances).

Justification for delegation

44. This level of detail is more appropriate to be contained within secondary legislation. This will also allow flexibility in the event of changing circumstances.

Justification for the level of parliamentary scrutiny

45. Regulations made under this section are subject to the affirmative resolution procedure. This element of the access regime is a significant protective measure for the individuals and so it is important that the Parliament has the opportunity to scrutinise the measures fully, particularly in regards to the grounds for making an application, the process by which applications are determined and access to that information. The affirmative resolution procedure is therefore the appropriate level of scrutiny. The regulations made under section 790ZG of the Act are also subject to the affirmative resolution procedure.

Clause 25: Power to make provision in regulations requiring the registrar, on application to rectify the register by removing material of a description specified

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

46. Clause 25 provides that the Secretary of State may by regulations make provision requiring the registrar, on application, to remove from the register material of a description specified in the regulations that derives from anything invalid or ineffective or that done without the authority of the overseas entity, or is factually inaccurate, or forged.
47. The regulations may make provision as to who may make an application, the information to be included in and documents to accompany an application, the notice to be given of an application and of its outcome, period in which objections to an application may be made and how an application is to be determined.

Justification for delegation

48. This power akin to the existing power under section 1095 of the Act and needs to be replicated in the Bill to ensure the registrar has the same powers that it has in respect of the UK companies register. It is appropriate that details about the process by which a person may make an application are set out in secondary legislation rather than primary.

Justification for the level of parliamentary scrutiny

49. Regulations made under this section are subject to the affirmative resolution procedure. As these regulations concern the removal of information from the register, BEIS considers that the affirmative procedure is appropriate and in line with the existing power under section 1095 of the Act.

Clause 30: Power to specify a description of overseas entity that is an exempt overseas entity

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

50. This power allows the Secretary of State to specify, by regulations, a description of overseas entity that would otherwise fall into the definition of “overseas entity” and be in scope of the new regime. The power to exempt is similar to the power to exempt companies from the scope of the PSC regime (contained in section 790B(1)(b) of the Act). An overseas entity that is exempt will be able to engage in land transactions without having to have registered in the overseas entity register.

Justification for delegation

51. The power is needed because it may not be appropriate for some entities to be in scope of the requirements, e.g. foreign governments or foreign local authorities. This will also ensure the overseas entities regime will be kept relevant and workable if there are new types of entities introduced in other countries which should not be in scope of the overseas entities regime.

Justification for the level of parliamentary scrutiny

52. Regulations made under this section are subject to the negative resolution procedure. BEIS considers that the affirmative procedure provides an appropriate level of scrutiny.

Clause 38: Power to commence

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: None

53. This is a standard power to bring certain provisions of the Bill into force on such day as the Secretary of State may by regulations appoint.

54. Consistent with the usual practice, regulations under this clause are not subject to any Parliamentary procedure. Parliament will have approved the principle of the provisions in the Bill by enacting them; regulations by the Secretary of State enables the provisions to be brought into force at the appropriate time.

Schedule 1, Part 5: Powers to make further provision under Schedule 1 to the Bill**Paragraph 8, Schedule 1: Power to make, by regulations, further provisions about certain required information**

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative resolution

Context and purpose

55. Schedule 1 to the Bill sets out the required information for the purposes of the table in clause 4 (which sets out the information and statements to be contained in an application by an overseas entity for registration at Companies House), including information about registrable beneficial owners. Included in the required information about registrable beneficial owners is the nature of that person's ownership or control over the overseas entity.

56. The power under paragraph 8 of Schedule 1 allows the Secretary of State to make, by regulations, further provisions about the information required to be supplied about the nature of control that a registrable beneficial owner has over an entity.

57. BEIS wants to ensure clarity for the supplier of information about the nature of control over an entity as regards the statement on the register to indicate the nature of this control. A similar power is contained in section 790K of the Act in the context of the PSC regime and has been exercised in the Register of People with Significant Control Regulations 2016. Regulation 7 in Part 3 of the PSC Regulations which makes provision about the particulars to be noted in a company's register of persons with significant control concerning the nature of a person's control over the company. The UK company has to make a statement, for example, indicating a threshold in relation to which the PSC's shareholding falls into (e.g. between 50% and 75% of the total share capital of the company). The Government envisages using the power in paragraph 9 of Schedule 1 in a similar way.

Justification for delegation

58. It is appropriate that the level of detail is found in the regulations, as this will provide consistency with other similar provisions in company law. The granular nature of this information to be required is too detailed to be included sensibly in primary legislation.

Justification for the level of parliamentary scrutiny

59. Regulations made under this section are subject to the negative resolution procedure. This procedure is appropriate as the detail of what constitutes control over an entity is contained within the Bill and will therefore have been subject to full Parliamentary scrutiny.

Paragraph 9, Schedule 1: Power to add or remove from any list of information in Schedule 1 to the Bill

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument, including a Henry VIII power

Parliamentary procedure: Affirmative resolution

Context and purpose

60. As set out above, Schedule 1 to the Bill sets out the required information for the purposes of the table in clause 4 (which sets out the information and statements to be contained in an application by an overseas entity for registration at Companies House), including information about registrable beneficial owners.

61. The intention is that the required particulars will allow those looking at the register to identify the individual recorded as the beneficial owner in the vast majority of cases and to build a meaningful picture of the overseas entity's overarching ownership and control structure.

62. This is particularly important from the perspective of identifying beneficial owners alleged or confirmed to have engaged in criminal activity. It is also important in terms of allowing those who engage with overseas entities in the context of any land transactions to have confidence in terms of knowing who ultimately owns and controls the overseas entity in question.

Justification for delegation

63. The Government appreciates that this is a Henry VIII power but believes that it is vital that the required particulars can be reviewed, and amended as necessary, in the light of changing circumstances. Enforcement agencies may, for example, identify additional or alternate pieces of information which would better enable them to consider information held by the registrar against other sources of information.

64. Paragraph 9 of Schedule 1 therefore enables the Secretary of State to make regulations adding or removing from the list of required particulars.

65. This power is also akin to the power under section 790K of the Act in the context of the PSC regime.

Justification for the level of parliamentary scrutiny

66. These regulations would be made under the affirmative resolution procedure. This will ensure Parliament can debate changes which may add or remove burdens on overseas entities or otherwise impact registrable beneficial owners.

Paragraph 7, Schedule 2: Power to describe in regulations a legal entity that is “subject to its own disclosure requirements” for the purposes of Schedule

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

67. Schedule 2 to the Bill defines registrable beneficial owner in relation to an overseas entity, which may be a legal entity or an individual. A legal entity is a registrable beneficial owner in relation to an overseas entity if it is a beneficial owner of the overseas entity, is subject to its own disclosure requirements and is not exempt. This means that in certain circumstances a legal person may be entered in the register in place of an individual, as long as, among other things, that legal entity is itself disclosing beneficial ownership information. This ensures that a person who is trying to track the beneficial ownership details of an overseas entity can “follow the trail” where that entity has listed a legal person as its beneficial owner.
68. Paragraph 7 of Schedule 2 provides that a legal entity is “subject to its own disclosure requirements” if it meets one of the conditions in subsection (1). A condition is met if an entity is in scope of the PSC regime (i.e. a UK company disclosing PSC information to the registrar of companies); is a company with voting shares admitted to a regulated market which is situated in an EEA state; is a company with voting shares trading on a market listed in Schedule 1 to the Register of People with Significant Control Regulations 2016 (certain markets based outside of the EEA); is an eligible Scottish partnership under the Scottish Partnerships (Register of People with Significant Control) Regulations; is in scope of the overseas entities regime; or is of a description specified by the Secretary of State in regulations made under paragraph 7 of Schedule 2.
69. This power is similar to the power under section 790C(7)(d) of the Act in the context of the PSC regime.

Justification for delegation

70. It is envisaged that the power in paragraph 7(1)(f) will be used to describe entities which currently provide beneficial ownership information to a central register in their own country by whose law they are governed and that register is considered by the Secretary of State to be of sufficient standard (i.e. the entities are subject to equally robust ownership disclosure requirements).
71. It is appropriate to take the power in secondary legislation as it would be disproportionate to require an Act of Parliament to add such legal entities to the list.
72. This power is also necessary as the Government is not yet in a position to stipulate what standards would need to be met by the foreign register (and will need to maintain flexibility about this in the future).

Justification for the level of parliamentary scrutiny

73. Regulations made under this section are subject to the affirmative resolution procedure. BEIS considers that the affirmative procedure provides a suitable level of scrutiny.

Paragraph 23 of Schedule 2: Power to prescribe the characteristics of a “foreign limited partner”

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative resolution

Context and purpose

74. The power to prescribe the characteristics of a “foreign limited partner” (defined in paragraph 25(5) of Schedule 1A to the Act for the purposes of the PSC regime as an individual who participates in arrangements established under the law of a country or territory outside the UK and has the characteristics prescribed in regulations) has been replicated in the draft Bill for the overseas entities regime (in paragraph 23 of Schedule 2).
75. The prescribed characteristics may be set out, among other things, by reference to the nature of arrangements and the nature of an individual’s participation in the arrangements.

Justification for delegation

76. This level of detail is more appropriate to be contained within secondary legislation because it will allow this element of the policy to be kept under review in light, for example, changing circumstances and will ensure flexibility is maintained about the characteristics of a foreign limited partner in the future.

Justification for the level of parliamentary scrutiny

77. Regulations made under this section are subject to the affirmative resolution procedure. BEIS considers that the affirmative procedure provides an appropriate level of scrutiny. This is in line with the existing precedent in paragraph 25(5) of Schedule 1A to the Act (in the context of the PSC regime).

Paragraph 25, Schedule 2: Power to amend Schedule 2 for a permitted purpose / Power to amend thresholds etc.

Power conferred on: Secretary of State

Power exercisable by: Regulations made by Statutory Instrument (also includes Henry VIII power)

Parliamentary procedure: Affirmative resolution

Context and purpose

78. Schedule 2 defines a “beneficial owner” for the purposes of the Bill as a person who meets one of the specified conditions. These include ownership of more than 25% of shares, ownership of more than 25% of voting rights etc.
79. The 25%+ threshold is consistent with the threshold used in the context of the PSC regime to establish an individual who has a significant control over a company (as one who holds, directly or indirectly, more than 25% of the shares, or is entitled to directly or indirectly to exercise (or control the exercise) of more than 25% of the voting rights).
80. The threshold of more than 25% reflects a level of control a person needs (under English company law) to be able to block special resolutions of a company.

Justification for delegation

81. The power is needed to retain flexibility to adapt the thresholds in the future if for example, domestic or international AML regulations were to adopt different thresholds. It is also possible that there may be a need to amend or supplement the specified conditions (for purposes of establishing who is beneficial owner) to cover, for example, more complex company ownership and control structures.
82. This power is akin to the power in paragraph 26 of Schedule 1A to the Act.

Justification for the level of parliamentary scrutiny

83. Regulations made under this section are subject to the affirmative resolution procedure. This will allow Parliament to debate proposals which could have a material impact on the efficacy of the policy.