

# **SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 7: COMPANIES: TRANSPARENCY**

##### **Register of people with significant control**

###### ***Section 81: Register of people with significant control***

385. This section introduces Schedule 3, which amends the Companies Act 2006 (CA 2006) to require companies to keep a register of people with significant control over the company. The requirements and the meaning of a ‘person with significant control’ are set out in that Schedule.

###### ***Schedule 3: Register of people with significant control***

386. This Schedule defines what is meant by a ‘person with significant control’ (PSC) (section 790C and paragraph 2 of Schedule 3, inserting new Schedule 1A to CA 2006) and sets out a company’s requirements to obtain required information on such people and hold it in a register kept available for public inspection (the “PSC register”). The Schedule also sets out the obligations that apply to people with significant control and certain legal entities.

387. The requirement for companies to provide information in the PSC register to the registrar in the context of their confirmation statement is set out in section 92, which substitutes a new Part 24 into CA 2006 (‘Duty to deliver confirmation statement instead of annual return’). The registrar will make this information public, with limited exceptions as set out in paragraph 8 of Schedule 3 and Section 96.

#### **Part 1: Duty to obtain information and keep register**

##### **Part 21A: Information about people with significant control**

###### ***Chapter 1: Introduction***

###### ***790A: Overview***

388. [Section 790A](#) outlines the content of Part 21A in order to assist readers’ navigation of the provisions.

###### ***790B: Companies to which this Part applies***

389. [Section 790B](#) sets out the companies to which Part 21A applies.

390. Subsection (1) (a) provides that the Part does not apply to companies which are DTR5 issuers. This is because such companies already make information about major

shareholders public and, in view of the general regulatory provisions to which they are subject, are thought to be lower risk generally of being used for criminal purposes.

391. 'DTR5 issuer' is defined in subsection (3) and refers to companies required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure Rules and Transparency Rules sourcebook ('DTR rules'), or those provisions as amended or replaced. These are companies who have shares admitted to trading on UK regulated or prescribed markets, for example the Main Market of the London Stock Exchange. Chapter 5 sets out the vote holder and issuer notification rules that apply when major shareholdings are bought and sold. These notifications are publicly available.
392. Subsection (1) (b) provides that the Secretary of State may by regulations exempt other types of company. In making regulations the Secretary of State must have considered whether those companies are subject to disclosure rules broadly similar to those that apply to DTR5 issuers (subsection (2)). Regulations might, for example, exempt UK companies listed on overseas markets with comparable disclosure and transparency rules.

### **790C: Key terms**

393. **Section 790C** defines key terms used in Part 21A.
394. Subsections (2) to (3) provide that an individual meeting one or more of the specified conditions, as set out in Part 1 of Schedule 1A ("the specified conditions"), is a person with significant control (PSC) over the company.
395. **Section 790C** also sets out the circumstances in which a legal entity rather than an individual may be noted in the PSC register. Such entities are called "relevant legal entities" (RLEs) (subsection (6)). An RLE is a legal entity that would have been a PSC had it been an individual and which is subject to its own disclosure requirements. These disclosure requirements are set out in subsection (7).
396. The effect of provisions in respect of RLEs is that if, for example, company A is owned by company B and company B maintains a PSC register under Part 21A, a person (P) with significant control over both B and A as a result of the same shareholding (held through B) need not be registered as a PSC in relation to A, provided that P has no other interest in the company through any other means. Instead, by virtue of section 790M(5), B will be noted in A's PSC register as an RLE. Those looking at A's register will be able to then look to B's register to identify P. This aims to avoid, where appropriate ownership disclosure arrangements are already in place, duplicative reporting.
397. Individuals with significant control over a company and RLEs are either registrable or non-registrable (subsections (4) and (8)). The term refers to whether or not the individual or RLE's details must be entered or noted in the company's PSC register (see section 790M).
398. An individual or RLE is non-registrable if they have significant control over the company by having significant control through one or more RLEs and no other interest in the company. Subsections (2) and (3) and Schedule 1A determine whether an individual or an RLE holds an interest in a company, holds that interest through another legal entity or has significant control over that legal entity (subsection (9)).
399. If an individual or RLE is not non-registrable, it is registrable.
400. The register that a company is required to keep in relation to its PSCs under section 790M is referred to in this Part as the company's "PSC register" (subsection (10)).
401. Subsection (12) provides that some entities are to be treated as if they were individuals (i.e. registrable or non-registrable persons) for the purpose of Part 21A. These are corporations soles, governments and government departments, international

organisations (provided its members include two or more countries, territories or governments), and local authorities and local government bodies. Although these entities are not subject to the disclosure rules set out in subsection (7), they cannot practically or usefully be ‘looked through’ to identify an individual or individuals who meet the specified conditions. This means that unless express provision is made, there will be no entry on the PSC register in such cases. This could be misleading or unhelpful for users of the PSC register. For this reason these entities are treated as individuals for the purpose of this Part, whether or not they are legal persons. Regulations may be made to modify the application of Part 21A in respect of such entities.

## **Chapter 2: Information-gathering**

### **Duty on companies**

#### **790D: Company’s duty to investigate and obtain information**

402. **Section 790D** sets out a company’s duty to investigate and obtain information on registrable persons and RLEs.
403. A company must take reasonable steps to find out if there is anyone who is a registrable person or RLE in relation to it and identify them (subsection (1)), and must give notice to anyone whom it knows or has reasonable cause to believe to be a registrable person or RLE (subsection (2)). The duty in subsection (2) does not limit the company’s obligations under subsection (1).
404. In addition, a company may give notice to a person it knows or has reasonable cause to believe knows the identity of a registrable person, an RLE (whether registrable or non-registrable) or an entity that would be an RLE were it subject to its own disclosure requirements. A company may also give notice to a person likely to know someone who would know the identity of such persons. This is set out in subsections (5) and (6). A company may give notice to a person under subsections (2) and (5) simultaneously.
405. Subsection (5) is intended to provide the company with a means to obtain information on registrable persons and RLEs where it does not itself know their identity, including where there are entities in the ownership chain which are not RLEs but which might know the identity of a registrable person or RLE. For example, a company may know that a person (X) is acting on behalf of a PSC (P), but may not know any of P’s details. The company may serve notice on X in order to obtain information on P. ‘Knowing the identity of a person’ is defined in subsection (13).
406. A company may serve notice on a lawyer under subsection (5) to obtain information. It will be rare for information held by a lawyer about PSCs or RLEs to be subject to legal professional privilege. However, where that is the case the lawyer is not required to provide information to the company (subsection (12)).
407. Subsections (3) to (4) and (7) to (8) make provision in relation to the giving of notice. They stipulate the information that the notice must contain and must require from the recipient. For example, an individual receiving a notice under subsection (3) must state whether or not they are a registrable person and correct, complete or confirm the particulars included in the notice. “Particulars” is defined in subsection (13)(b). Further provision about the giving of notices may be made by regulations (subsection (9)).
408. As the company’s duty to obtain information under section 790D is on-going and continuous there is no defined period within which steps must be taken or notice given. Addressees must however respond to a notice within one month of the date of the notice (subsection (8)).
409. A company need not give notice if it already knows that a person is a registrable person or RLE and has all of the required information (subsection (11)). In respect of registrable persons, the information must have been provided by the individual or with

their knowledge. If this is not the case, the company must give notice to that individual. This is to ensure that individuals are in all cases aware of their entry in the company's PSC register. This is important, for example, in the event that the individual wants to apply for their information to be protected from disclosure (see Chapter 5) and to ensure that the individual knows to update the company should their personal details change.

**790E: Company's duty to keep information up-to-date**

410. **Section 790E** requires a company to keep information in its PSC register up-to-date.
411. Subsections (2) and (5) require the company to give notice to registrable persons and RLEs as soon as reasonably practicable once the company knows or has reasonable cause to believe that a "relevant change" has occurred, a relevant change being ceasing to be a registrable person or RLE or a change in particulars (subsections (3) and (4)).
412. The notice must require the addressee to confirm whether the change has occurred and, if so, to state the date of the change and to correct, complete or confirm the particulars included in the notice (subsection (6)). As under section 790D, addressees must respond within one month from the date of the notice and further provision may be made by regulations in relation to the giving of such notices (subsection (7)).
413. A company need not give notice if it has already been informed of the relevant change. As under section 790D, information on registrable persons must have been provided by the individual or with their knowledge (otherwise the company must give notice to that individual).

**790F: Failure by company to comply with information duties**

414. It is an offence, triable either way, for a company to fail to take steps or give notice under sections 790D and 790E. The offence is committed by the company and every officer of the company in default (see section 1121 CA 2006), punishable by imprisonment or a fine.

**Duty on others**

**790G: Duty to supply information**

415. **Section 790G** complements section 790D (which places an obligation on companies to identify registrable persons and RLEs) by placing a proactive disclosure obligation on registrable persons and RLEs in certain circumstances. The intention is to ensure that registrable persons and RLEs who are not known to or identified by the company under section 790D are nevertheless entered in the company's PSC register.
416. The requirements are loosely based on sections 198 to 211 of the Companies Act 1985, which were replaced by regulations under the Financial Services and Markets Act 2000. Those regulations implement the Transparency Directive and place a disclosure obligation on investors in certain publicly listed companies (see the DTR rules and the exemption in section 790B for DTR5 issuers as a result).
417. The obligation to notify the company arises where a person knows or ought reasonably to know that they are a registrable person or RLE and where their particulars are not already registered in the company's PSC register, provided they have not received a notice from the company and that these circumstances have continued for a period of at least one month (subsection (1)). This means that a person's obligation will normally only arise where a company has failed to identify them under section 790D. However, nothing in section 790G prevents a person from notifying the company that they are a PSC or RLE before a month has elapsed, should they wish to do so.
418. Where the duty under section 790G applies, registrable persons and RLEs must notify the company that they are a registrable person or RLE, stating the date on which they became such a person and giving the company their required particulars (see

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section 790K) (subsection (2)). They must notify the company no later than one month after all the conditions in subsection (1) were first met (subsection (3)).

### ***790H: Duty to update information***

419. **Section 790H** complements section 790E, requiring a registrable person or RLE to notify the company of relevant changes to information in the PSC register. The intention is to ensure that changes to information in the PSC register that are not known to or identified by the company are nevertheless recorded, thereby supporting the accuracy of the company's PSC register.
420. The obligation arises where the person is entered in the company's PSC register and knows or ought reasonably to know that a relevant change has occurred, a relevant change being defined in section 790E(3); and where the company's PSC register has not been altered to reflect the change and the person has not received notice from the company under section 790E within one month of the day on which the change occurred (subsection (1)). As under section 790G, this means that a person's obligation will normally only arise where the company is not already aware of the change. The person may however inform the company in advance should they wish to do so.
421. The notification must state the date on which the change occurred and provide any information needed by the company to update the register (subsection (2)). The notification must be given by the later of two months after the change occurred (providing one month for the company to send a notice and then one month for the person to make a notification if required) or one month after the person discovered the change. The latter may arise if the person only became aware of the change some time after it had occurred.

## **Compliance**

### ***790I: Enforcement of disclosure requirements***

422. **Section 790I** provides that offences for failure to comply with a notice under section 790D or 790E or a duty under section 790G or 790H are contained in Schedule 1B.

## **Exemption from information and registration requirements**

### ***790J: Power to make exemptions***

423. The Secretary of State may exempt an individual or legal entity from the requirements of Part 21A where there are special reasons to do so. This provision broadly reflects section 796 of the CA 2006 ('Notice requiring information: persons exempted from obligation to comply').
424. The effect of the exemption is set out in subsection (2) and provides that no information on such persons need be held by the company or provided to the registrar.

## **Required particulars**

### ***Section 790K: Required particulars***

425. **Section 790K** details the information that must be held by the company in respect of registrable persons (both individuals and entities treated as individuals under section 790C(12)) and RLEs. These are the "required particulars".
426. Subsection (1) provides that in respect of individuals, with the exception of former name and business occupation (which are not thought relevant in the context of people with significant control), the personal information replicates that currently held on company

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directors (see section 163 of CA 2006, 'Particulars of directors to be registered: individuals'):

- i. name
- ii. a service address
- iii. country or state of usual residence
- iv. nationality
- v. date of birth
- vi. usual residential address.

427. This information should provide for the unique identification of individuals registered in the vast majority of cases.

428. Subsection (2) provides that in respect of entities to be treated as individuals for the purposes of Part 21A, the following information should be held:

- i. name
- ii. principal office
- iii. legal form and law by which it is governed.

429. Subsection (3) provides that in respect of registrable RLEs, the information about the entity replicates that currently held on corporate directors (see section 164 of CA 2006, 'Particulars of directors to be registered: corporate directors and firms'):

- i. corporate or firm name
- ii. registered or principal office
- iii. legal form of the entity and law by which it is governed
- iv. register of companies in which it is entered and registration number (if applicable).

430. Information in subsection (2) and (3) should enable the entity in question to be appropriately identified by users of the register.

431. The PSC register must also hold details of the date on which a person became a registrable person or RLE and the nature of that control (subsections (1)(g), (1)(h), (2)(d), (2)(e), (3)(e) and (3)(f), and see Schedule 1A). This will allow those searching the register to see how a person controls the company and the period over which this control has been exercised.

432. In the case of individuals, the PSC register must also state whether restrictions on using or disclosing the individual's information are in force, following the making of an application under regulations made under section 790ZG (subsection (1)(i)). This will enable the register available for public inspection to indicate that information has been withheld from public disclosure.

433. The Secretary of State may make further provision by regulations about the way in which details of a registrable person or RLE's control are to be recorded (subsection (5)). The intention is to ensure that given details of control are relevant, appropriate and proportionate.

***Section 790L: Required particulars: power to amend***

434. **Section 790L** enables the Secretary of State to make regulations under the affirmative resolution procedure to add or remove data fields from the required particulars in section 790K (and see equivalent power that exists in respect of company directors' particulars under section 166 of CA 2006, 'Particulars of directors to be registered:

power to make regulations’). This power will help ensure that the policy can be kept under review and adapted in the light of changing circumstances.

### **Chapter 3: Register of people with significant control**

#### **Section 790M: Duty to keep register**

435. Section 790M requires a company subject to Part 21A to keep a register of people with significant control over the company (the “PSC register”, see section 790C(10)). This will be one of the registers that companies are required to keep under CA 2006, alongside others including the register of members and directors (sections 113 and 162 of CA 2006 respectively). Together these registers will provide publicly available information on the management, ownership and control arrangements of the company.
436. The PSC register must include the required particulars of registrable persons once all of those particulars have been confirmed. A company must not enter any information about a registrable person in its register until it has all of the information and all of it has been confirmed. This is to avoid the inclusion of ‘partial data’ in the PSC register which may make it more difficult to identify where a company or individual has failed to comply with a duty under Chapter 2.
437. Particulars are “confirmed” if they have been provided or confirmed to the company by the person or with the person’s knowledge; or if they were included in the statement of initial significant control delivered to the registrar under section 9 (‘Registration documents’, and see paragraph 4 of Schedule 3). This will ensure that individuals are aware of their inclusion in the register – this is important in the event that they want to apply for their information to be protected from disclosure, for example (see Chapter 5).
438. The company must also note details of any registrable RLEs in its register (subsection (5)). Such particulars need not be ‘confirmed’, as the same considerations are not felt to apply in respect of legal entities since they cannot have their information protected. However, as for registrable persons, the company should not note any information about an RLE in the register until it has all of the required particulars.
439. Where a person becomes a registrable person or RLE in respect of the company on its incorporation, the date to be entered in the register as the date when the person became such a person will be the date of the company’s incorporation (subsection (10)).
440. Where a relevant change occurs (see section 790E), the company must enter the date and details of the change in its PSC register. This means information that is no longer current will be clearly marked in the register (and see section 790U for provision on the removal of entries). The company must not enter details of the change in respect of registrable persons unless that information has been confirmed (subsection (6)) for the same reason as it may not enter any particulars of a registrable person without confirmation.
441. Additional information may need to be noted in the PSC register to ensure clarity for those searching the register. For example, where the company reasonably believes it has no registrable persons or RLEs, that fact. Subsection (7) provides that the Secretary of State may by regulations subject to the affirmative resolution procedure require additional matters to be noted in the PSC register.
442. Subsection (11) further clarifies certain matters relating to the entry of information in the PSC register, including that section 126 of the CA 2006 (‘Trusts not to be entered on register’) does not affect what the company may record or send to the registrar in respect of the PSC register. Subsection (14) clarifies that entry in a company’s PSC register does not give rise to any obligation on the part of the company to have any regard to the interests of the persons so registered. The latter builds on the precedent in section 808(7) CA 2006 (‘Register of interests disclosed’).
443. It is a summary offence for a company to fail to keep a register. The offence is committed by the company and every officer of the company in default and is

punishable by a fine. A daily default fine for continued contravention also applies (subsections (12) and (13)). This offence provision replicates the offence provision that applies for failure to keep a register of members (section 113 CA 2006, 'Register of members').

### **Sections 790N to 790V**

444. **Sections 790N to 790V** set out how a company must maintain and make the PSC register available. These provisions are based on sections 114 to 121 and 125 of the CA 2006, which make broadly similar provision in respect of a company's register of members. It is considered important that the same regime applies to these two registers where appropriate, given that the two registers together will provide the complete picture of the company's ownership and control.

### **Section 790N: Register to be kept available for inspection**

445. **Section 790N** provides that a company's PSC register must be kept available for inspection at its registered office or at a place specified in regulations under section 1136 of CA 2006 ('Regulations about where certain company records to be kept available for inspection'). This is based on section 114 CA 2006, 'Register to be kept available for inspection'. Failure to give notice to the registrar of where the PSC register is kept or of any change in that location is a summary offence punishable by fine. The offence is committed by the company and every officer in default (and see section 114(5) to (6) CA 2006).
446. An index will not be required to be kept in respect of the PSC register (in contrast with section 115 CA 2006 ('Index of members')). It is felt there will be few companies who have more than 50 entries. In addition, it is anticipated that most companies will have an electronic register that can be easily searched without the need for a statutory index provision.

### **Section 790O: Rights to inspect and require copies**

447. **Section 790O** sets out a person's right to inspect and require copies of a company's PSC register. Any person may, on request and for a proper purpose, inspect the company's PSC register without charge and require a copy of the register on payment of such fee as may be prescribed by the Secretary of State. 'Proper purpose' may be read in light of the fact that the purpose of the PSC register is to provide public information about a company's ownership and control. Subsection (4) enables the company to check that information is only to be used and disclosed for such a purpose.
448. **Section 790O** is based on section 116 of CA 2006 ('Rights to inspect and require copies'). Unlike the register of members it is however considered important that any person may inspect the register free of charge due to the scope of those who may be registrable persons or RLEs in respect of a company (and may therefore wish to inspect a company's register), as opposed to a limited category of people (e.g. members, and see section 116(1) CA 2006). Similarly, the person requesting access to the PSC register need not state whether they will disclose the information to any other person. This is to avoid any unintended restriction on the use of PSC information for a proper purpose.

### **Section 790P: PSC Register: response to request for information or copy**

449. **Section 790P** is based on section 117 of CA 2006 ('Register of members: response to request for inspection or copy'). It sets out how a company must respond to a request made under section 790O, requiring a company to either comply with the request or apply to the court where it considers that a request has not been made for a proper purpose.



***Section 790Q: PSC register: refusal of inspection or default in providing copy***

450. **Section 790Q** is based on section 118 of CA 2006 ('Register of members: refusal of inspection or default in providing copy'). If the provisions of section 790O are breached a summary offence punishable by fine is committed by the company and every officer in default (section 790Q(2)). A daily default fine for continued contravention also applies.

***Section 790R: PSC register: offences in connection with request for or disclosure of information***

451. **Section 790R** provides that it is an offence for a person to knowingly or recklessly make a misleading, false or deceptive statement in a request made under section 790O; or for a person who has obtained information under that section to do (or fail to do) anything that results in the information being disclosed to another person if they know or suspect that person may use the information for an improper purpose. This is based on provision in section 119 of CA 2006 ('Register of members: offences in connection with request for or disclosure of information'). The offence is triable either way and punishable by imprisonment and/or a fine.

***Section 790S: Information as to state of register***

452. **Section 790S** is based on section 120 of CA 2006 ('Information as to state of register and index') and provides that a company must inform a person inspecting or receiving a copy of the PSC register of the most recent date of any alterations and whether there are any further alterations to be made. Failure to do so is a summary offence committed by the company and every officer of the company in default, punishable by a fine.

***Section 790T: Protected information***

453. **Section 790T** makes clear that a company's duty to keep its PSC register available for inspection does not extend to information protected from public disclosure under regulations made under Chapter 5.

***Section 790U: Removal of entries from the register***

454. **Section 790U** provides that an entry in the PSC register relating to a person who used to be a registrable person or an entity that used to be a registrable RLE may be removed ten years after the date on which they ceased to be a registrable person or RLE. This is based on section 121 of CA 2006 ('Removal of entries relating to former members').

***Section 790V: Power of court to rectify register***

455. **Section 790U** provides that a person aggrieved or "any other interested party" (defined in subsection (5) as a member of the company or any other person who is a registrable person or RLE in relation to the company) may apply to the court for rectification of the PSC register if information is or is not entered in the register without sufficient cause; or if there is delay or default in recording that a person is no longer a registrable person or RLE (subsection (1)). Subsections (2) and (3) set out the action the court may take in response to such an application. The court must require the company, in rectifying its register, to also give notice of the rectification to the registrar (subsection (4)). This section is based on section 125 of CA 2006 ('Power of court to rectify register').

***Chapter 4: Alternative method of record keeping***

***Section 790W: Introductory***

456. **Chapter 4** sets out rules which allow private companies to keep information on the public register at Companies House (referred to in this Chapter as "the central register") instead of in their PSC register. This is consistent with provision made in respect of other registers elsewhere in the Act (see section 94).

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457. **Section 790W** introduces Chapter 4 and provides that Chapter 3 of Part 21A must be read with this Chapter (subsection (3)).

***Section 790X: Right to make an election***

458. **Section 790X** provides that a private company may elect to keep its PSC register on the central register. Election may be made on incorporation, by the subscribers wishing to form a company (subsection (1)(a)); or post-incorporation by the company itself (subsection (1)(b)).
459. The company must have given notice to registrable persons and RLEs whose particulars are stated in the PSC register at least 14 days before making the election (“eligible persons”, subsection (3)). Should a registrable person or RLE object to the proposed election within that time, the company may not make the election (subsection (2)).
460. On incorporation, notice of an election must be given to the registrar with the documents required to be delivered on incorporation.
461. Post-incorporation, notice of an election must be given to the registrar with all the information that is contained in the PSC register, and is current, at the date of the election (subsection (6)).
462. In both cases the company or subscribers must provide a statement that no objection to the election has been received.
463. A company must provide any updated information in the event of any change in the details in the PSC register between the time the election is delivered to the registrar and the time the election takes effect (subsection (7)). If the PSC register is rectified, the company must also update the central register (subsection (8)). Failure to do so is a summary offence, punishable by fine, committed by the company and every officer in default.
464. Subsection (11) provides that in Chapter 4, “current” refers to persons who are registrable persons or RLEs at that time or date (as opposed to persons who used to be registrable persons or RLEs and whose information may still be in the register under section 790U); and to any other matters that are current at that time or date.

***Section 790Y: Effective date of election***

465. **Section 790Y** provides that an election takes effect when it is registered by the registrar (subsection (1)). The election remains in force until the company ceases to be a private company or withdraws the election under section 790ZD (subsection (2)).

***Section 790Z: Effect of election on obligations under Chapter 3***

466. During the period an election is in force, a company does not have to maintain a PSC register (subsection (2)). Where the election was made post-incorporation, the company must continue to keep the register that it was required to hold prior to the election (a “historic” register). However it does not need to update the historic register to reflect changes that occur whilst the election is in force (subsection (3)).
467. Rights contained in Chapter 3 of Part 21A, including the rights to inspect or require copies of the PSC register, continue to apply in respect of the historic register whilst the election is in force (subsection (4)).
468. The historic register must be annotated to state that an election is in force; the date of that election and that up-to-date information is available on the central register (subsection (5)). The offence applied in sections 790M (12) and 790M (13) (‘Duty to keep register’) applies equally to section 790Z(5).

***Section 790ZA: Duty to notify registrar of changes***

469. Instead of updating its PSC register, during the period of an election, a company must deliver information to the registrar that would otherwise be entered in the company's PSC register (subsection (2)). Information must be delivered as soon as reasonably practicable once the company becomes aware of it and no later than the time by which they would have been required to enter the information in their PSC register (subsection (3)).
470. Failure to do so is a summary offence committed by the company and every officer in default, punishable by fine. A daily default fine applies for continued contravention (subsections (4) and (5)).

***Section 790ZB: Information as to state of central register***

471. A person inspecting or requesting a copy of material on the central register that would, were the election not in force, be available on the company's PSC register, may ask the company to confirm whether the company has delivered all relevant information to the registrar (subsection (1)).
472. Failure by the company to respond to such a request is a summary offence committed by the company and every officer in default, punishable by fine (subsections (2) and (3)).
473. This section is equivalent to a person's rights to inspect a company's PSC register under section 790S.

***Section 790ZC: Power of court to order company to remedy default or delay***

474. **Section 790ZC** makes provision equivalent to section 790V. It provides that a person aggrieved or "any other interested party" (defined in subsection (6)) may apply to the court for rectification of material held on the central register if information is or is not included in material delivered to the registrar without sufficient cause; or if there is delay or default in notifying the registrar that a person has become or ceased to be a registrable person or RLE (subsection (1)). Subsections (3) and (4) set out the action the court may take in response to such an application. This section does not affect a person's rights under section 1095 CA 2006 ('Rectification of register on application to registrar') or section 1096 CA 2006 ('Rectification of the register under court order') (subsection (5)).

***Section 790ZD: Withdrawing the election***

475. **Section 790ZD** deals with the withdrawal of an election. This is achieved by the company giving notice of withdrawal to the registrar (subsection (2)). No additional provision (e.g. the giving of notice to the PSCs) is felt necessary in this context.
476. The withdrawal takes effect when the notice is registered by the registrar (subsection (3)). From that point, the company must maintain a PSC register in line with its obligations under Chapter 3 of Part 21A. This includes all the information about its PSCs that is current at that time. It does not however include information that was current when the election was in force if that information is no longer current (subsection (5)).
477. The company must annotate its PSC register to state that the election has been withdrawn; the date that the withdrawal took effect; and that information relating to the period of the election is available on the central register (subsection (6)). The offence applied in section 790M(12) and section 790M(13) ('Duty to keep register') applies equally to section 790ZD(7).

***Section 790ZE: Power to extend option to public companies***

478. **Section 790ZE** gives the Secretary of State the power to make regulations under the affirmative resolution procedure to amend CA 2006 to extend the option to keep information on the central register instead of in the PSC register to public companies, with modifications or consequential amendments as may be required (subsection (1)). This is consistent with the power contained elsewhere in the Act in relation to other registers (section 94 and Schedule 5).

***Chapter 5: Protection from disclosure***

***Section 790ZF: Protection of information as to usual residential address***

479. **Section 790ZF** applies sections 240 to 244 of CA 2006 ('Directors' residential addresses: protection from disclosure') to protected information under section 790ZF(2). Protected information is a PSC's usual residential address (URA) and information that their service address is their residential address.
480. The application of sections 240 to 244 suppresses protected information from the public register maintained by Companies House and from the company's PSC register. Both the company and Companies House must omit this protected information from the register available for public inspection (section 790T and see paragraph 8 of Schedule 3). This is considered appropriate in light of the potential risk to the PSC if the information were to be publicly available.
481. The application of section 243 ('Permitted use or disclosure by the registrar') means that the Secretary of State may make regulations setting out the way that protected PSC information may be used and disclosed. Powers under section 243 have been exercised for directors under the Companies (Disclosure of Address) Regulations 2009. The intention is to make broadly equivalent provision for PSCs. This will include enabling protected information to be shared with specified public authorities such as law enforcement agencies.
482. **Subsection 790ZF(3)** clarifies that subsection (1) does not apply where an application has been granted under regulations made under section 790ZG (see below).

***Section 790ZG: Power to make regulations protecting material***

483. There may be circumstances in which a PSC's required particulars (over and above the URA and day of date of birth (see Section 96)) should be suppressed from public disclosure to protect individuals at serious risk of harm. For instance, where the company's activities may put the individual at risk (e.g. in the case of companies that conduct animal testing).
484. **Section 790ZG** therefore provides that the Secretary of State may make provision by regulations for some or all PSC information to be suppressed from the public register maintained by Companies House and the company's PSC register in certain circumstances. Both the company and Companies House must omit this protected information from the register available for public inspection (section 790T and see paragraph 8 of Schedule 3). Such provision may not however be made in relation to an entity treated as an individual under section 790C(12) as the same potential risks are not considered to apply.
485. Regulations may require the company and the registrar not to use or disclose information, other than in prescribed circumstances, where an application to that effect is made (subsection (1)). Regulations will set out the public authorities to whom this information may be disclosed.
486. Regulations may make provision as to the criteria for applications and the process by which applications are made and determined (subsection (3)). They may also make provision in respect of the duration of the protection; procedures for its revocation;

and the charging of fees by the registrar in relation to access to such information in prescribed circumstances. The scope of this power is broadly similar to that in section 243(5) CA 2006 ('Permitted use or disclosure by the registrar'). Subsection (3) (f) enables regulations to set out how a company should make its register available for public inspection and respond to requests for access where an application under section 790ZG has been made.

487. Regulations may also give the registrar discretion to determine an application and to refer questions to others in so doing (subsection (4) and see section 243(6) CA 2006).
488. Subsection (6) clarifies that this section does not affect the use or disclosure of a person's details in any other capacity, for example, as a director or member of a company.

### ***Schedule 1A: References to people with significant control over a company***

489. **Paragraph 2** of Schedule 3 inserts Schedule 1A to CA 2006. Schedule 1A sets out what is meant by references to people with significant control over a company and to their holding an interest in the company through another legal entity.
490. **Section 790C(2)** provides that a person with significant control over a company is an individual ("X") who meets one or more of the "specified conditions" in relation to the company ("company Y"). The specified conditions are set out in Part 1 of Schedule 1A ("The specified conditions"). Part 2 specifies what is meant by holding an interest in a company, including through a relevant legal entity, for the purposes of Part 21A of the Companies Act 2006. Part 3 of Schedule 1A sets out rules for the interpretation of the Schedule ("Supplementary provision").

### **Part 1: The specified conditions**

#### **Ownership of shares**

491. The first condition is that X holds, directly or indirectly, more than 25% of the shares in company Y (paragraph 2)

#### **Ownership of voting rights**

492. The second condition is that X holds, directly or indirectly, more than 25% of the voting rights in company Y (paragraph 3).

#### **Ownership of right to appoint or remove directors**

493. The third condition is that X holds the right, directly or indirectly, to appoint or remove a majority of company Y's directors (paragraph 4).

#### **Significant influence or control**

494. The fourth condition is that X has the right to exercise, or actually exercises, significant influence or control over company Y (paragraph 5).
495. This provision will capture individuals who exercise control other than through the first, second or third conditions. 'Significant influence or control' is intended to capture individuals with a level of control broadly equivalent to those with an interest in more than 25% of the company's shares or voting rights.
496. In deciding whether a person has significant influence or control, a person must have regard to guidance about its meaning (paragraph 24). That guidance will be subject to the negative resolution procedure

## **Trusts, partnerships etc.**

497. The fifth condition is that the trustees of a trust or the members of a firm (as defined in section 1173(1) CA 2006) that is not a legal person meet one or more of the other specified conditions (or would do if they were individuals) and that X has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm (paragraph 6).
498. The purpose of this condition is to ensure that where an individual (or individuals) other than the trustees or members of the firm has significant influence or control over the activities of the trust or firm, that individual is also identified as a PSC.

## **Part 2: Holding an interest in a company etc**

499. [Part 2](#) of Schedule 1A enables a person (“V”) to work out when they hold an interest in a company (“W”) and when that interest is regarded as being held through a relevant legal entity. This allows the person to identify whether they are a registrable or non-registrable person, based on the specified conditions in Part 1 of the Schedule.
500. The grounds on which a person is regarded as holding an interest in a company (paragraph 8) are linked to the five specified conditions. Interests are regarded as being held through a legal entity under paragraph 9 by reference to paragraph 18.

## **Part 3: Supplementary provision**

### **Joint interests**

501. Shares or rights in a company may be held jointly. For example, in the case of a partnership, the partners may hold the shares jointly and indivisibly. In the case of shares held in trust, the trustees will hold the shares jointly.
502. In such cases, each person is treated for the purpose of this Schedule as holding the shares or right in their own right (paragraph 11). For example, if A and B have a joint interest in 26% of the shares in company Y, each of them will be a registrable person in respect of Y by virtue of each holding 26% of Y’s shares.

### **Joint arrangements**

503. Shares or rights in a company may also be subject to joint arrangements between persons, where those persons agree to act jointly in respect of the shares or rights in question. Paragraph 12 provides that in such cases, each person is treated for the purpose of this Schedule as holding the combined shares or rights of both of them. For example, if A and B each hold 20% of shares in company Y and have made a joint arrangement, each of them will be a registrable person in respect of Y by virtue of holding 40% of Y’s shares.
504. “Arrangement” is defined in paragraph 21. Paragraph 12(2) provides that a “joint arrangement” is an arrangement between the holders of shares or rights that they will exercise all or substantially all their respective rights together, as pre-determined by the arrangement in question. In such cases, all parties to the arrangement are registrable persons or RLEs.

### **Calculating shareholdings**

505. [Paragraph 13](#) sets out the way shareholdings are to be calculated, including where a legal entity does not have a share capital. All shares issued by the company, as set out in the company’s statement of capital, are to be factored in to the calculation.

## **Voting rights**

506. Paragraph 14 sets out the way voting rights are to be calculated, including in legal entities which do not have, or are not required by law to have, general meetings where matters are decided by the exercise of voting rights.
507. When calculating the percentage of voting rights held for the purpose of this Schedule, any voting rights held by the entity itself in treasury should not be included when calculating the total voting rights in the entity (paragraph 15).

## **Rights to appoint or remove members of the board**

508. Paragraph 16 clarifies that the third condition relates to directors holding a majority of the voting rights on all or substantially all matters.
509. This provision is intended to capture scenarios which would give the holder of the right a level of control over the company broadly equivalent to holding more than 25% of the shares or voting rights. It reflects similar provision elsewhere in CA 2006 (see section 1162(2)(b), in relation to parent and subsidiary undertakings) and in the Financial Services and Markets Act 2000 (FSMA) (see section 89J(4)(b), in relation to the power of competent authority to call for information). Those provisions equally seek to define what is meant by one party having control over another.
510. If an entity does not have a board of directors, references are to be read as references to the equivalent management body of the entity (paragraph 17).

## **Shares or rights held “indirectly”**

511. Paragraph 18 sets out what is meant by shares or rights held indirectly.
512. A person holds shares in company Y indirectly if they have a majority stake in a legal entity and that entity holds the shares in question (paragraph 18(1)(a)).
513. If that legal entity is part of a chain of legal entities, a person will hold the shares indirectly if each entity in the chain has a majority stake in the entity immediately below it in the chain, and the last entity in the chain holds the shares in question (paragraph 18(1)(b)).
514. A person has a right “indirectly” if they have a majority stake in a legal entity and that entity has the right in question (paragraph 18(2)(a)).
515. If that legal entity is part of a chain of legal entities, a person will exercise the right indirectly if each entity in the chain has a majority stake in the entity immediately below it in the chain, and the last entity in the chain has the right in question (paragraph 18(2)(b)).
516. “Majority stake” is defined in paragraph 18(3) by reference to voting rights, dominant influence or control, and the right to appoint or remove directors. It reflects provision made in section 89J(4) FSMA, which describes how one person may have control over another.
517. The majority stake allows the person to control the legal entity in question. The person can then, by extension, control – for example - the way in which the legal entity votes its shares in company Y. Without a majority stake in the legal entity, the person will not normally have sufficient control to do this in respect of company Y. He or she cannot therefore be said to have significant control over company Y. In a chain of entities, this level of control needs to be reflected at each point in the chain in order that the person can be said to indirectly hold the shares or rights in company Y. Reference to share ownership alone is not included in the definition of “majority stake” as without control of voting rights it would not give a person the requisite amount of control in a chain structure.

518. [Paragraph 18\(4\)](#) provides that for the purpose of this paragraph, a legal entity is treated as having the right to appoint a director if a person is appointed as director of company Y as a result of being appointed director of the legal entity; or if the legal entity is the director of company Y.

### **Shares held by nominees**

519. [Paragraph 19](#) provides that where a share is held by a nominee on behalf of a person, the share is treated as held by that person for the purpose of this Schedule. This means that person – and not the nominee – will be entered in the PSC register where the relevant specified condition is met by the nominee.

### **Rights treated as held by a person who controls their exercise**

520. Similarly to paragraph 19, paragraph 20 provides that where a person controls a right, the right is treated as held by that person for the purpose of this Schedule. This means that the controller of the right – and not the holder, unless they are also a controller - will be entered in the PSC register where the relevant specified condition is met.
521. [Paragraph 20\(2\)](#) sets out when a person has control of a right. This is by reference to an arrangement between a person and others.
522. The definition of “arrangement” in paragraph 21 is broad, but provides that there must be a degree of stability about the arrangement. The intention is to exclude one-off actions or decisions which would not equate to ‘significant control’.

### **Rights exercisable only in certain circumstances etc.**

523. Some rights in a company are only exercisable in certain circumstances. Paragraph 22 provides that for the purpose of determining whether a person has significant control, such rights should only be taken into account when the circumstances have arisen and for as long as they continue to exist; or when the circumstances are within the person’s control.
524. This provision intends to ensure that only ‘live’ interests in the company are entered in the PSC register. It is based on similar provision made in Schedules 6 (‘Meaning of “subsidiary” etc: supplementary provisions’) and 7 (‘Parent and subsidiary undertakings: supplementary provisions’) to CA 2006.
525. The exception to this is in the case of an administration. Paragraph 22(2) specifies that the rights of administrators and creditors during relevant insolvency proceedings should not be taken into account for the purpose of the PSC register. The control exercised in such circumstances is not considered relevant for entry in the PSC register due to the exceptional nature of the circumstances and its limited duration. “Relevant insolvency proceedings” are defined in sub-paragraph (3).
526. [Paragraph 22\(4\)](#) clarifies that rights temporarily incapable of exercise – for example, because they have been suspended – should continue to be taken into account.

### **Rights attached to shares by way of security**

527. Where shares are provided by a person as security, the rights attached to those shares are to be treated in this Schedule as belonging to that person (paragraph 23). This is provided that the rights are only exercisable in accordance with that person’s instructions and in that person’s interests (with the exception of the right to preserve or realise the value of the security).
528. This provision is based on similar provision made in Schedules 6 (‘Meaning of “subsidiary” etc: supplementary provisions’) and 7 (‘Parent and subsidiary undertakings: supplementary provisions’) to CA 2006.



### **Limited partnerships**

529. Where a limited partnership is deemed to hold shares or rights in a company, the limited partners will hold those shares or rights jointly and will meet the specified conditions accordingly (see paragraph 11).
530. Limited partners in limited partnerships registered under the Limited Partnerships Act 1907 will not however normally be involved in the management of the partnership business (see section 6(1) of that Act). They do not therefore have control over the company in the same way as other holders of shares or rights. Similar considerations apply in relation to particulars in certain overseas arrangements.
531. [Paragraph 25](#) accordingly provides that an individual does not meet the first, second or third specified condition (see above) by virtue only of being a limited partner, unless they are involved in the management of the partnership business (see definition of “limited partner” in sub-paragraph (4)) or a foreign limited partner (see definition of “foreign limited partner” in sub-paragraph (5)).
532. Similarly, sub-paragraph (2) provides that individuals who directly or indirectly hold shares or rights in relation to a limited partner are not considered to meet the first, second or third specified condition by virtue only of that interest.
533. Sub-paragraphs (1) and (2) do not apply in relation to identifying whether a firm meets the specified condition in paragraph 6(a).
534. Sub-paragraph (5) defines “foreign limited partner” by reference to regulations made under the power in sub-paragraph (6). This power allows the Secretary of State to prescribe the characteristics of non-UK arrangements in regulations subject to the affirmative resolution procedure.

### **Part 3: Power to amend thresholds etc.**

535. [Paragraph 26](#) gives the Secretary of State the power to amend Schedule 1A for a permitted purpose. This power would be exercised by regulations made under the affirmative resolution procedure.
536. The permitted purposes are to increase or decrease the 25% threshold; change or add to the specified conditions in Part 1; and change or add to Part 2 in consequence of changes made to Part 1. Part 1 may only be amended to include circumstances that give individuals a level of control over company Y broadly similar to the other specified conditions.
537. The threshold may need to be amended to react to changing circumstances and on-going monitoring and review. Part 1 may need to be amended to ensure that Schedule 1A adequately covers scenarios involving, for example, more complex corporate structures – particularly as new corporate structures develop or individuals seek new ways to evade the disclosure requirements.

### ***Schedule 1B: Enforcement of disclosure requirements***

538. [Schedule 1B](#) is intended to incentivise compliance with the requirements of Part 21A. It provides a means other than the threat of criminal prosecution by which companies may encourage persons to respond to notices issued under sections 790D or 790E. This may be particularly helpful where those in receipt of the notice are outside the UK.
539. Provisions are loosely based on the provisions in section 794 of CA 2006 (‘Notice requiring information: order imposing restrictions on shares’) and subsequent. However, rather than require companies to apply to the court in order to apply restrictions, the company may itself apply the restrictions subject to the requirements detailed below. This is intended to reduce the administrative cost and burden for the

company and the court, whilst maintaining due regard to the rights of individuals and third parties.

### **Right to issue restrictions notice**

540. [Paragraph 1](#) provides that if a company serves notice on a person with a relevant interest (see paragraph 2, below) under section 790D or 790E and that person fails to comply within the specified timeframe, the company may give the person a warning notice that they intend to issue the person with a restrictions notice. A restrictions notice may be served one month after a warning notice has been given if the person has not complied with the section 790D or 790E notice and no valid reason has been provided as to why they have not done so.
541. The company must have regard to the rights of third parties in respect of the relevant interest in deciding whether to issue a restrictions notice (sub-paragraph (6)).

### **Relevant interests**

542. “Relevant interest” refers to any shares or rights held by the person on whom notice has been served (paragraph 2). Part 3 of Schedule 1A applies to determine whether a person has a relevant interest. The exception is where shares are treated under paragraph 19 or 20 of Schedule 1A as held by a person other than the holder of the share or right. For the purpose of Schedule 1B, both the holder and the controller of the share or right are considered to have a relevant interest.

### **Effect of restrictions notice**

543. [Paragraph 3\(1\)](#) sets out the effect of a restrictions notice issued under paragraph 1, and circumstances in which the restrictions do not apply. Interests subject to restrictions may not be transferred and no rights may be exercised or shares issued in right of that interest. The company may not pay any sums due in respect of the interest other than in a liquidation.

### **Protection of third party rights**

544. [Paragraph 4](#) provides that following application by any person aggrieved that a restrictions notice issued by the company under paragraph 1 unfairly affects the rights of third parties in respect of the interest subject to restrictions, the court may give a direction that certain acts do not constitute a breach of the restrictions. The direction is given by the court for the purpose of protecting the third party rights in question and is subject to such terms as the court thinks fit.

### **Breach of restrictions**

545. [Paragraph 5](#) specifies the actions that constitute offences in relation to an interest subject to restrictions. These include where a person who knows their interest to be subject to restrictions fails to tell any person with the right to vote in respect of that interest of that fact (unless they know the person to be aware of that fact) (sub-paragraph (3)) and where a person enters into an agreement in respect of the interest that is void, knowing that to be the case (sub-paragraph (4)).
546. It is also an offence, committed by the company and every officer in default, for a company to issue shares in contravention of a restrictions notice (paragraph 6).
547. Offences under paragraph 5 and 6 are triable either way and punishable by a fine (paragraph 7). These offences may not however be prosecuted without the consent of the Secretary of State (see section 1126 CA 2006, ‘Consents required for certain prosecutions’, as amended by paragraph 9 of Schedule 3). This is based on the precedent for equivalent offences in Part 22 of CA 2006 (see section 798, ‘Penalty for attempted evasion of restrictions’).

### **Relaxation of restrictions**

548. Under paragraph 8, a person aggrieved may apply to the court for the restrictions to be lifted. The court may only do so if the relevant facts about the interest have been disclosed without any person having gained an unfair advantage or if the interest is to be sold (see paragraph 9). Sub-paragraphs (4) and (5) make further provision in the case of shares to be sold.

### **Orders for sale**

549. Paragraphs 9 and 10 set out the procedure by which shares subject to restrictions may be sold. Application to the court to do so may only be made by the company in question. Provision is made, where shares are sold, for the proceeds of the sale (less costs) to be paid into the court for the benefit of persons beneficially interested in the relevant interest, so that such persons may apply to the court to have the proceeds paid to them.

### **Company's power to withdraw restrictions notice**

550. A company must itself withdraw the restrictions imposed if it is satisfied that there is a valid reason to justify the person's failure to comply with the notice; or if the relevant information in respect of the notice is provided; or if it discovers that there is an unfair impact on third parties in respect of the interest subject to restrictions (paragraph 11). This provision does not prevent the company from withdrawing the restrictions notice in other circumstances.

### **Supplementary provisions**

551. Paragraph 12 provides that the Secretary of State may make regulations under the negative resolution procedure in relation to the issuing and withdrawing of restrictions notices. In particular, regulations may prescribe the form and content of warning and restrictions notices, and the manner in which they must be given.
552. They may also make provision in respect of the factors constituting a "valid reason" for failure to comply with a notice and what happens to matters pending at the point restrictions are lifted (for example, if a dividend is due to be paid but has not been issued in respect of that interest).

### **Offences for failing to comply with notices**

553. Paragraph 13 provides that it is an offence for a person (including the officers of the entity in the case of legal persons) to whom a notice is addressed under section 790D or 790E to fail to comply with the notice or to knowingly or recklessly make a false statement.
554. The offence does not however apply if the person can prove that the requirement was frivolous or vexatious (paragraph 13(3)). The offence is triable either way, punishable by imprisonment or a fine. This is based on the offence provision in section 795 of CA 2006 ('Notice requiring information: offences'), which applies to persons failing to comply with notices issued under section 793 ('Notice by company requiring information about interests in its shares'). The offences are considered sufficiently similar such that the same penalty should apply.

### **Offences for failing to provide information**

555. Paragraph 14 provides that the penalty for a person failing to comply with a duty under section 790G or 790H or knowingly or recklessly making a false statement in respect of that duty is the same as that under paragraph 13 (see above). It is considered that the offences are sufficiently similar such that the same penalty should apply.
556. The offence will not apply to a person who could not reasonably have known that they were a registrable person or RLE in relation to the company or that a relevant change had occurred (see sections 790G(1)(b) and 790H(1)(c)).

## **Part 2: Related amendments**

557. **Part 2** of Schedule 3 sets out amendments related to these new provisions.
558. **Section 9** of CA 2006 ('Registration documents') sets out the information and documents that must be delivered to the registrar in an application to register a company. Paragraph 4 of Schedule 3 inserts new section 9(4)(d) which requires a statement of initial significant control (see new section 12A, below) to be contained within the application. A company may not be registered by the registrar unless this information is provided (see section 14 of CA 2006, 'Registration').
559. **Paragraph 5** inserts new section 12A into CA 2006 ('Statement of initial significant control'). The statement must contain the required particulars of any individuals and legal entities who will be registrable persons or RLEs in relation to the company on incorporation and include any other matters that would be required on incorporation to be entered in the PSC register under section 790M. This would include provision made in regulations under section 790M, for example, that a company believes it has no registrable persons or RLEs.
560. The required particulars are those listed in section 790K. If an application under regulations made under section 790ZG has been made, that fact must be reflected in the required particulars. It is not necessary to include the date on which the person became a registrable person or RLE. That date will be the date of the company's incorporation, which will not be known to the company at the time the statement is made. A statement that any information on individuals is included with the knowledge of those individuals must also be made (subsection (3)). As in Part 21A, this is intended to ensure that individuals know of their inclusion in the PSC register.
561. **Paragraph 6** amends section 120 CA 2006 ('Information as to state of register and index') to clarify that a company must tell those inspecting or receiving a copy of the register of members whether there are any further changes to be made to it. This brings section 120 into line with new section 790S.
562. **Paragraph 7** amends section 1068 of CA 2006 ('Registrar's requirements as to form, authentication and manner of delivery') to provide that the registrar may require documents delivered under Chapter 4 of Part 21A (i.e. where an election to keep PSC information on the central register is made) to be delivered by electronic means. Equivalent provision is made in respect of the register of members where an election has been made (see paragraph 30 of Schedule 5 to the Act). Paragraph 8 amends section 1087 of CA 2006 ('Material not available for public inspection') to provide that protected information under Chapter 5 of Part 21A (see above) must not be made available for public inspection by the registrar.
563. **Paragraph 9** amends section 1126 of CA 2006 ('Consents required for certain prosecutions') to provide that certain offence provisions in Schedule 1B may only be prosecuted with the consent of the Secretary of State (see above) and that section 1112 CA 2006 ('General false statement offence') may only be prosecuted with the consent of the Secretary of State or the Director of Public Prosecutions. This will ensure that all prosecutions, including private prosecutions, are brought in the public interest. No provision is made for Scotland, since private prosecutions may not be brought in the Scottish courts under these provisions.
564. **Paragraph 10** amends section 1136 of CA 2006 ('Regulations about where certain company records to be kept available for inspection') to provide that the PSC register and historic PSC register (where applicable) may be included in scope of such regulations. This is felt necessary for the purposes of consistency with other provisions relating to company registers.

### ***Section 82: Review of provisions about PSC registers***

565. This section provides that the Secretary of State must carry out a review of Part 21A and related provisions of CA 2006 inserted by this Act within three years of Section 92 coming into force. Section 92 makes provision for information in the PSC register to be delivered to the registrar of companies ('the registrar'). It is considered appropriate for the review to take account of both the company's requirement to maintain a register (Part 21A) and the requirement to provide this information to the registrar and make it publicly available (section 92). Three years is considered an appropriate period of time within which to review the operation of the requirements.
566. The Secretary of State must publish and lay before Parliament a report setting out the conclusions of the review. Subsection (2) sets out particular factors that must be included in that report.

### **Register of interests disclosed**

#### ***Section 83: Amendment of section 813 of the Companies Act 2006***

567. **Part 22** of CA 2006 ('Information about interests in a company's shares') sets out how a public company may obtain information about persons with an interest in its shares. In so doing, the company must maintain a register of information received (section 808, 'Register of interests disclosed') and keep it available for inspection.
568. **Section 813** of CA 2006 ('Register of interests disclosed: refusal of inspection or default in providing copy') sets out the offence that applies where a company fails to make the register available or makes default in providing a copy.
569. **Section 83** is a technical provision to clarify the current application of section 813. It provides that an offence is not committed where the refusal or default is in accordance with section 812 of CA 2006 ('Court supervision of purpose for which rights may be exercised').

### **Abolition of share warrants to bearer**

#### ***Section 84: Abolition of share warrants to bearer***

570. This section inserts a new provision in section 779 of the Companies Act 2006 (CA 2006) in order to prohibit the creation of new share warrants, commonly referred to as 'bearer shares'.
571. Subsection (3) of the section introduces Schedule 4, which puts in place arrangements for the conversion or cancellation of existing bearer share warrants. The new section and Schedule will together effect a full abolition of bearer shares in UK companies.

#### ***Schedule 4: Abolition of share warrants to bearer***

572. **Part 1** of this Schedule sets out the provisions for the transitional arrangements required for the conversion and cancellation of bearer share warrants, to achieve abolition. Part 2 of the Schedule contains the amendments to specific sections of the Companies Act 2006 (CA 2006) which are required by the new provisions.

### **Part 1: Arrangements for Cancellation and Conversion**

573. **Part 1** of the Schedule sets out the surrender period for bearer share warrants, then the process for cancellation of any remaining bearer share warrants.
574. **Paragraph 1** specifies a nine month "surrender period" for bearer shareholders to surrender their warrants to the company for cancellation and for registration of the shares specified in the warrants.

575. Paragraphs 2 and 4 set out the requirements for a company to give notice to their bearer shareholders – informing them of their rights to surrender and the consequences of not exercising them. This notice must be given within the first month of the surrender period, and again before the end of the eighth month if there are bearer shares remaining at that point. Failure to give notice will constitute an offence by the officers of that company.
576. Paragraph 3 provides for the consequence of failure to surrender a bearer share warrant during the first seven months of the “surrender period.” At the end of that period, the bearer share warrants will become non-transferable and all other rights attached to them will be suspended
577. Paragraph 5 requires a company with any bearer share warrants remaining at the end of the nine month “surrender period” to apply to court within 3 months for an order cancelling the warrants and the related shares. Sub-paragraphs (3) and (5) of paragraph 5 specify that the former bearer share holders must be notified about the application and that the Registrar of Companies must be notified when a cancellation order is made.
578. Paragraph 6 details the court orders to effect cancellation of bearer share warrants remaining at the end of the nine month “surrender period.” If the court is satisfied that a company has fulfilled the notice requirements with respect to the bearer share holder during the surrender period, it will make a cancellation order; if it is not satisfied then it will make a suspended cancellation order. Sub-paragraph (3) describes the suspended cancellation order, including the requirement of the company to give notice to its bearer share holders within 5 working days of the court order of the start of a 2 month period from the date of the order in which they can surrender the share warrants (the “grace period”). Cancellation must be entered in a company’s register of members.
579. Paragraph 7 specifies a requirement for a company to provide the Registrar with certain documents specified in the Schedule relating to the cancellation including a revised statement of capital. Paragraph 8 provides that if cancellation results in a reduction in share capital below the authorised minimum in the case of a public company the company must be re-registered as a private company before the cancellation is registered.
580. Paragraph 9 requires payment by a company into court on cancellation of the bearer share warrants of the nominal value of the shares and any premium paid on them, together with the value of any dividends accrued on the shares since the rights attached to them were suspended.
581. Paragraph 10 provides that a former bearer share holder may apply to the court to claim the sum paid in to court by the company (in respect of their shares and any dividend) on cancellation of the shares. Such an application may be made between 6 months and 3 years after the cancellation date. Paragraph 10 sets out that the court will only make such a payment in the case of exceptional circumstances which prevented the holder of the bearer share warrant surrendering the share during the surrender period. The purpose is to provide that where there has been a genuine and profound impediment to surrendering bearer share warrants in the time specified, then a limited period of time should be available to allow anyone so affected to claim their property. Exceptional circumstances might include serious, incapacitating and long term illness during the surrender period, for instance.
582. Paragraph 11 provides for circumstances where a company enters administration or goes into liquidation or appoints an administrative receiver after the making of a cancellation or suspended cancellation order. In these circumstances the office-holder may apply to the court for the sum paid into court in respect of any relevant warrants, excluding any accrued dividends.
583. Paragraph 12 specifies that sums remaining with the court after three years be paid into the Consolidated Fund.

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- 584. [Paragraph 13](#) prevents a company with issued bearer share warrants from making an application for striking off.
- 585. [Paragraph 14](#) sets out the requirements of the notices that must be given by the company with issued bearer share warrants under the various provisions of this Schedule.
- 586. [Paragraph 15](#) applies the language requirements of the Companies Act 2006 to documents delivered to Companies House under the Schedule.
- 587. [Paragraphs 16 to 18](#) set out details relating to the offences that apply in relation to various provisions of the Schedule.
- 588. [Paragraph 19](#) applies various sections of the Companies Act 2006 to the Schedule.
- 589. [Paragraph 21](#) defines terms used in this Schedule.
- 590. [Paragraph 21](#) provides that until sections 94 (option for keeping information on central register) and 97 (Contents of statement of capital) come into force, the provisions in schedule 4 operate without reference to those provisions.

## **Part Two: Consequential Amendments**

- 591. [Part 2](#) of the Schedule amends CA 2006 for consistency with the provisions to abolish share warrants to bearer.
- 592. [Paragraph 23](#) amends section 122 of CA 2006 to reflect the fact that once section 84 is in force no more share warrants will be able to be issued.
- 593. [Paragraph 24](#) amends section 617 of CA2006 to allow for a company to alter its share capital on the basis of the requirements in this Schedule. [Paragraph 25](#) amends section 652 of CA 2006 to ensure a member of the company is not liable in respect of any share to any call or contribution exceeding the nominal amount notified to the Registrar in a statement of capital resulting from a reduction of capital on the basis of the requirements in this Schedule.
- 594. [Paragraph 26](#) amends CA 2006 to remove section 780 which currently requires a company to provide a share certificate on surrender of a bearer share warrant, since this will no longer be needed when bearer share warrants are abolished.
- 595. [Paragraphs 275 and 28](#) amend CA 2006 to provide for restoration of a company through the administrative route or by the court if it had bearer share warrants in issue at the time of strike-off or dissolution. Any bearer share warrants and the shares specified in them will be cancelled on restoration. If, as a result, the company has no share capital it must make an allotment of shares.

### ***Section 85: Amendment of company's articles to reflect abolition of share warrants***

- 596. In order to reflect the fact that once section 84 is in force it will be unlawful for a company to issue share warrants, this section provides that a company whose articles of association authorise the issue of share warrants may amend its articles without recourse to specific procedures set out in CA 2006, so without the need for a special resolution or for compliance with any relevant provision for entrenchment contained in the articles.

### ***Section 86: Review of section 84***

- 597. This section requires the Government to review the provisions in 84 of the Act no later than 5 years after these provisions come into force. The Government's policy of sunset and review of regulations can be found in section 1.7 of the Better Regulation Framework Manual (July 2013). In accordance with this guidance the new provision to which this section applies is the abolition of share warrants to bearer.

## **Corporate Directors**

### ***Section 87: Requirement for all company directors to be natural persons***

598. This section will introduce the general requirement that company directors need to be natural persons (individuals). It inserts new sections into the Companies Act 2006 (CA 2006) to require that company directors should be natural persons and prohibits (subject to exceptions) the appointment of legal persons as directors (for example companies). It provides a power for the Secretary of State to set out exceptions – situations where legal persons can be directors.
599. Subsection (2) removes section 155 from CA 2006 which requires all companies to have at least one director who is a natural person (section 155(1)) and permits natural persons to be appointed by virtue of the office they hold (section 155(2)). As subsequent sections set out, these requirements are now superseded.
600. Subsection (4) inserts sections 156A, 156B and 156C into the Companies Act 2006:
- i. Section 156A introduces the general requirement that company directors must be natural persons. It reintroduces the provision which allows individuals to be appointed by virtue of the office they hold. If a legal person is appointed a director by a company that appointment will be void. However, any liability attaching to the person in the role of director is not affected. Also provisions which place liability on persons other than appointed directors (where they purport to act as directors or are shadow directors) will still apply even though they are legal persons). It will be an offence to breach these requirements. These restrictions apply subject to any exceptions made to the general requirement that directors must be individuals (see below).
  - ii. Section 156B gives the Secretary of State the power to make regulations setting out the exceptions to the general requirement that directors must be individuals. If this power is exercised it must include the compliance process, including registration requirements, and must require that the company has at least one director who is an individual. This power can also be used to require the approval of a regulator to the appointment of a corporate director. Specific regulators will be designated in regulations.
  - iii. Section 156C sets out the transition period for companies with corporate directors. After one year of the coming into force of section 156A a corporate director not in scope of exceptions defined in regulations under section 156B will cease to be a director. The company will need to make the necessary register alterations and notifications to the Registrar.

### ***Section 88: Review of section 87***

601. This section requires the Government to review provisions in section 87 of the Act every 5 years, with the first review taking place no later than 5 years after these provisions come into force. The Government's policy of sunset and review of regulations can be found in section 1.7 of the Better Regulation Framework Manual (July 2013). In accordance with this guidance, which requires review sections for new legislation that regulates business, the new provision to which this section applies is the requirement for all company directors to be natural persons.

## **Shadow directors**

### ***Section 89: Application of directors' general duties to shadow directors***

602. The general duties of directors are set out in sections 170 to 177 of the CA 2006 and are based on common law rules and equitable principles. They set out how directors are expected to behave.



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603. At present the general duties of directors can only apply to shadow directors in the same way as the corresponding common law rules and equitable principles can. In future, the starting point for shadow directors will be that the general duties apply to them unless they are not capable of applying (removing the current restriction). This is achieved by replacing section 170(5) of the CA 2006. This change in default position is neither intended to preclude the courts from looking at the application of the duties on a case by case basis, nor from drawing on existing case law in any given case.
604. Subsection (3) gives the Secretary of State the power to make regulations directly applying or disapplying one or several of the general duties to shadow directors with or without modification, to facilitate their application to shadow directors. The power is subject to the affirmative procedure.

### ***Section 90: Shadow directors: definition***

605. This section amends the CA 2006, Insolvency Act 1986, and the Company Directors Disqualification Act 1986 to refine the definition of a shadow director.
606. It makes clear that where advice, guidance, directions or instructions are given in exercise of a function conferred by or under legislation, including legislation made by the Devolved Administrations, the definition of shadow director will not be met. To achieve this, it amends the definition of “enactment” in the CA 2006 to refer to legislation made in Wales. It also sets out that a Minister of the Crown acting in their official capacity will not be considered a shadow director when issuing advice or guidance.

### ***Section 91: Shadow directors: provision for Northern Ireland***

607. This section inserts the new definition of shadow director inserted by section 90 into the Insolvency (Northern Ireland) Order 1989, and the Companies Directors Disqualification (Northern Ireland) Order 2002. This ensures consistent treatment of shadow directors in Northern Ireland, England, Wales and Scotland.