

EXPLANATORY MEMORANDUM TO
THE EUROPEAN PUBLIC LIMITED-LIABILITY COMPANY (REGISTER OF
PEOPLE WITH SIGNIFICANT CONTROL) REGULATIONS 2016

2016 No. 375

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation & Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 To modify the legislation relating to the register of people with significant control (PSC Register) to ensure the law is effective for those European public limited-liability companies - “Societates Europaeae” (SEs) that are registered in the United Kingdom.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Companies Act 2006 (“the Act”) contains the main statutory basis for UK company law and corporate governance. Part 21A of the Act, as inserted by section 81 of the Small Business, Enterprise and Employment (SBEE) Act 2015, and the Register of People with Significant Control Regulations 2016 (“the PSC Regulations”), will require UK registered companies to each keep a register of the ‘people with significant control’ over the company from 6th April 2016. Each company will be required to send the information to the registrar of companies with their confirmation statement (which replaces the annual return) or on incorporation, from 30th June 2016 onwards. The registrar will maintain the PSC information in a central publicly accessible register.
- 4.2 Council Regulation 2157/2001/EC (“the Regulation”) and the European Public Limited-Liability Company Regulations 2004 make provision for the creation and registration of a Societas Europaea (SE) in the UK. Article 9 of that Regulation states that an SE shall, in general, be governed by the laws adopted by Member States which apply to the public limited-liability companies which are registered in that Member State. However this general rule is subject to any specific provision contained in the Regulation, any laws specifically adopted by a Member State and which apply to SEs, and the provisions of the articles of the SE.

- 4.3 Accordingly, SEs registered in the UK will be subject to the PSC Regime to the same extent as other public limited-liability companies registered in the UK. These Regulations therefore modify the PSC Regime (as set out in Part 21A of the Companies Act 2006 and the PSC Regulations) to ensure that it operates appropriately in respect of SEs.

5. Extent and Territorial Application

- 5.1 This instrument applies to all of the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.
- 5.3 The UK Government is responsible for company law in England and Wales, and in Scotland. The Northern Ireland administration has agreed that, while company law remains a transferred matter within the legislative competence of the Northern Ireland Assembly, the Act and the associated legislation on companies and partnerships should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 Parliamentary Under-Secretary of State for Business, Innovation & Skills, and Minister for Intellectual Property, Baroness Neville-Rolfe, has made the following statement regarding Human Rights:

In my view the provisions of the European Public Limited-Liability Company (Register of People with Significant Control) Regulations 2016 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 At the UK-chaired G8 Summit in 2013, the G8 Leaders¹ recognised the problem of corporate opacity. They agreed common Principles² to tackle the misuse of companies and legal arrangements and to publish National Action Plans setting out the concrete steps they would take to implement them. Central to the Principles was that companies should obtain and hold information on their beneficial ownership (i.e. on the individuals who ultimately own and control the company), and that this information should be accessible onshore to relevant authorities. The UK has committed to do this by creating a publicly accessible central registry of company beneficial ownership information, maintained by the registrar of companies – the PSC register.
- 7.2 Corporate opacity can facilitate illicit activity and lead to poor corporate behaviour which erodes trust and damages the business environment. The overarching policy objective of the register is to reduce crime and improve the business environment to facilitate economic growth through enhanced corporate transparency.
- 7.3 Benefits to society of the policy are anticipated to arise from a reduction in crime and reduced costs to law enforcement agencies. This is as a result of the deterrent effect of having to comply with the requirements, and information on the register providing

¹ Now G7

² G8 action plan principles to prevent the misuse of companies and legal arrangements (June 2013): <https://www.gov.uk/government/publications/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements/g8-action-plan-principles-to-prevent-the-misuse-of-companies-and-legal-arrangements>

improved detection, greater efficacy of investigations and outcomes where companies or LLPs are being used to facilitate serious criminal activity. Benefits to business are anticipated to accrue as a result of their operation in a more open and trusted business environment. The anticipated wider benefits of the register have the potential to be far greater than costs to business, however it has not been possible to fully monetise them.

- 7.4 An SE is a European Public Limited -Liability Company established by EU law (Council Regulation 2157/2001/EC). The requirements for registering an SE in the UK are set out in the European Public Limited-Liability Company Regulations 2004 (SI 2004/2326). This company form allows companies operating in more than one EU state to organise under a single European label for greater mobility within the EU. At present there are around 50 SEs registered in the UK.
- 7.5 SEs can be formed by merger, as a holding company, as a subsidiary, or by transformation of a public limited company into an SE. The Regulation also allows for a single tier or two tier board including employee representation.
- 7.6 As set out in paragraph 4.3, the regulations in this instrument are required to ensure that the PSC Regime operates effectively in its application to SEs. SEs will be subject to the PSC Regime to the same extent as public limited-liability companies.

Consolidation

- 7.7 Consolidation with previous orders or regulations is not relevant. The Department for Business, Innovation & Skills has no plans for consolidation at this time.

8. Consultation outcome

- 8.1 There was a public consultation on proposals for the introduction of a publicly accessible central registry of UK company beneficial ownership information between July and September 2013³.
- 8.2 A further consultation from 19 June to 17 July 2015 asked for views on a draft of the PSC regulations for companies⁴. This consultation paper also started the dialogue with interested parties about applying the PSC register to LLPs and the modifications required in respect of SEs, by inviting anyone with an interest in the application of these requirements to make contact. On the basis of that contact, the Government then undertook wide-ranging discussions of the policy propositions and draft regulations through correspondence, bilateral meetings and calls, and two large workshops over summer 2015. A Government response to the consultation paper, also covering the wider consultation process, is available on the gov.uk⁵.

9. Guidance

- 9.1 Guidance on the PSC register requirements will be made available on the gov.uk website.
- 9.2 Statutory guidance on the meaning of ‘significant influence or control’ in the context of the PSC register, as required by paragraph 24 of Schedule 1A to the Act, will be

³ <https://www.gov.uk/government/consultations/company-ownership-transparency-and-trust-discussion-paper>

⁴ <https://www.gov.uk/government/consultations/company-ownership-and-control-register-implementation>

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

issued and made available on the gov.uk website. This will help to explain the fourth condition by which a person may qualify as a person with significant control over a company, i.e. where a person has the right to exercise, or actually exercises, significant influence or control over a company (see paragraph 5 of Part 1 of Schedule 1A to the Act).

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is an estimated equivalent annual net cost to business of the PSC register measures in the Act of £85.9m. The measures will impact some 3.4m companies (including the approximately 40 SEs) and LLPs (which it is estimated are 59,000 out of the total 3.4m), with the average cost per entity estimated to be £25 pa. Charities which are companies will be in scope of the reforms and impacted by them.
- 10.2 Further costs have been estimated in relation to the protection regime and the requirement for companies and LLPs to make their own PSC register publicly available (which includes the costs to companies and LLPs of providing a copy of their PSC register). These policy elements have an estimated equivalent annual net cost to business of £4.7m and £10.1m respectively. Both IAs assume no difference in cost to LLPs compared with companies.
- 10.3 The impact on the public sector is a cost to the registrar of companies in setting up and administering the register. The overall monetised one-off costs to the public sector are estimated to be £92k, with ongoing costs estimated at £225k pa.
- 10.4 Impact Assessments are submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 SEs are often large businesses or are the holding company or subsidiary of a large business. However, the wider PSC legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses. The assessment is that excluding small and micro businesses from the policy would create a significant loophole and could risk a substantial impact on the ability of the package to reduce crime, and exclude small and micro businesses from the benefits that can be derived from increased corporate transparency.

12. Monitoring & review

- 12.1 A review provision is included in these Regulations.
- 12.2 The Secretary of State must publish a report setting out the conclusions of the first review of these Regulations within the period in which the Secretary of State is required to publish a report about the operation of Part 21A of the Act by section 82 of the Small Business, Enterprise and Employment Act 2015. It is anticipated that the report will be published in 2019.
- 12.3 Subsequent reports about these Regulations are afterwards to be published at intervals not exceeding five years.

13. Contact

- 13.1 Andrew Death at the Department for Business, Innovation & Skills Telephone: 020 7215 3807 or Andrew.Death@bis.gsi.gov.uk can answer any queries regarding the instrument.