

EXPLANATORY MEMORANDUM TO
THE SCOTTISH PARTNERSHIPS (REGISTER OF PEOPLE WITH SIGNIFICANT CONTROL) REGULATIONS 2017

2017 No. 694

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations implement in relation to Scottish partnerships aspects of Article 30 (requiring a central register of beneficial ownership information for corporate and other legal entities) of Council Directive 2015/849/EU (“the Directive”) on the prevention of money laundering and terrorist financing. The regulations apply a modified version of the regime in Part 21A of the Companies Act 2006 (“the Act”) to limited partnerships governed by the law of Scotland and to qualifying general partnerships governed by the law of Scotland, collectively known as “eligible Scottish Partnerships”.
- 2.2 Transposition is not required in relation to limited or general partnerships registered or formed under the law applicable elsewhere in the United Kingdom, in view of the distinct legal status of Scottish partnerships in section 4 of the Partnership Act 1890.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The convention that an instrument should not be laid fewer than 21 days before it comes into force is not being followed, in order to meet the deadline for transposition of 26 June 2017. The instrument was not laid before the dissolution of Parliament on 3rd May and could not then be laid until after the General Election. If infringed for late implementation, the UK would risk significant daily fines.

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 Regulations extend a modified version of Part 21A of the Act, which requires companies to disclose their beneficial ownership information, to eligible Scottish partnerships (collectively, Scottish limited partnerships and Scottish qualifying partnerships).
- 4.2 The regulations make a minor amendment to the Limited Partnerships Act 1907.

- 4.3 The Information about People with Significant Control (Amendment) Regulations 2017 (S.I. 2017/693) provide for the transposition of article 30 in relation to companies and Limited Liability Partnerships (“LLPs”) by making minor amendment to Part 21A of the Act and its equivalent for LLPs.
- 4.4 HM Treasury have overall responsibility for the transposition of the Directive and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) complete the UK’s transposition of the Directive.
- 4.5 A transposition note setting out how the Directive will be transposed into UK law is available from the Sanctions and Illicit Finance Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The partnerships in scope of this instrument are governed by Scottish law, but there are duties on individuals and entities that may own or control an eligible Scottish partnership and there is no geographical limitation on those persons.
- 5.3 The UK Government is responsible for the law relating to business associations 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 associated legislation on companies and partnerships should apply to the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under-Secretary of State for the Department of Business, Energy and Industrial Strategy, Margot James, has made the following statement regarding Human Rights:

In my view the provisions of The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 The Directive’s aim is to prevent abuse of the financial system for the purposes of money laundering or terrorist financing. These regulations address a specific measure in Article 30 of the Directive which requires Member States to maintain a central register of information on the beneficial owners of corporate and other legal entities incorporated in their territory.
- 7.2 The justifications for these provisions in the Directive are similar to those that underpin our domestic measures in Part 21A of the Act, which require companies, LLPs and SEs to hold information on persons with significant influence or control over them (their “PSCs”). A lack of transparency over the ultimate ownership and control of corporates can facilitate illicit activity and lead to poor corporate behaviour which erodes trust and damages the business environment. The overarching policy objective of the Directive is to combat money laundering and terrorist financing. These measures will also 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, which will have easier access to information on corporates and other entities across the EU. There is an expected deterrent effect of having to comply with the requirements, as well as improved detection, greater efficacy of investigations and outcomes where corporate and other entities are being used to facilitate serious criminal activity, including across borders. Benefits to business are anticipated to accrue as a result of their operation in a more open and trusted business environment.
- 7.4 Under current domestic measures, most UK incorporated companies, LLPs and SEs are required to hold a PSC register and to send the information to the registrar of companies. Under these regulations eligible Scottish partnerships will not be obliged to hold their own register, but are required to investigate their beneficial ownership and after a four week transitional period to send information on their beneficial ownership to the registrar of companies in Scotland. Qualifying Scottish partnerships, which are not currently registered at Companies House, are also required to deliver basic registration information. Any individual registrable in relation to an eligible Scottish partnership may apply for their information to be protected. Protected information is not recorded on the publically available register at Companies House and may only be disclosed by the registrar in certain circumstances and to specific bodies.

Consolidation

- 7.5 BEIS has no plans to consolidate this legislation.

8. Consultation outcome

- 8.1 There was a public consultation on proposals for overall transposition of the Directive issued by HMT¹ in September 2016 and a separate public discussion paper published in November 2016 by BEIS² on the approach to transposition of Article 30 for comment.
- 8.2 Seventy-six responses relevant to Article 30 were received, primarily from a wide range of representative organisations. The responses showed strong support for greater transparency over Scottish Limited Partnerships, which have been linked in the media to money laundering and abuse for criminal purposes.
- 8.3 Stakeholder views were also gathered through a number of focus group events during the consultations as well as via a working group previously established to develop guidance on the PSC register requirements. In addition, surveys of companies, law enforcement, credit reference agencies, NGOs and company service providers were conducted to inform the Impact Assessment that covers these regulations.

9. Guidance

- 9.1 Detailed guidance for eligible Scottish partnerships and their PSCs on the new requirements is available on the gov.uk website.

¹ Overall transposition consultation: <https://www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive>.

² BEIS Paper Approach to Article 30 transposition: <https://www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register>

10. Impact

- 10.1 These measures will impact some 74,000 Scottish partnerships. The average cost per partnership is estimated to be £56 and ongoing costs of £25 pa. There is no impact on other forms of business, charity or voluntary body.
- 10.2 The 10 year cost to the public sector (Companies House) of implementing the UK's PSC regime was estimated in our 2016 impact assessment to be £92.4k in one off IT and communications costs and staff costs of £225k per year. The costs arising from the introduction of these regulations, which make minor modifications to that regime, will be absorbed within these ceilings. Therefore there is no impact on the public above those previously indicated when it was first established.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses. There is no scope to vary requirements according to size of business in the Directive.

12. Monitoring and review

- 12.1 These Regulations include a review provision in Part 10.
- 12.2 It is anticipated that the review will be co-ordinated with the report that the Secretary of State must publish about the operation of Part 21A of the Act under section 82 of the Small Business, Enterprise and Employment Act 2015, with the first report published in 2019.
- 12.3 Subsequent reports about these matters are to be published at intervals not exceeding five years.

13. Contact

- 13.1 Stephen Webster at the Department for Business, Energy and Industrial Strategy Telephone: 0207 215 3767 or email: Stephen.Webster@beis.gov.uk can answer any queries regarding the instrument.