

SMALL BUSINESS, ENTERPRISE AND EMPLOYMENT ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7: COMPANIES: TRANSPARENCY

Register of people with significant control

Schedule 3: Register of people with significant control

Part 1: Duty to obtain information and keep register

Part 21A: Information about people with significant control

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 790T 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').