



Department for  
Business, Energy  
& Industrial Strategy

# IMPLEMENTATION OF THE FOURTH MONEY LAUNDERING DIRECTIVE

Discussion paper on the transposition of  
Article 30: beneficial ownership of corporate  
and other legal entities



November 2016

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# 1. Purpose of this discussion paper

On 15 September 2016, HM Treasury published a consultation on the transposition of the Fourth Money Laundering Directive<sup>1</sup>. That consultation identifies and explains the changes to, and the new requirements of, the Directive as a whole, outlines the government's proposals or issues to be addressed for transposing them into UK law and seeks your views.

In conjunction with HM Treasury consultation, this discussion paper further outlines possible approaches to the transposition of a specific section of the Directive for which the Department of Business, Energy and Industrial Strategy is responsible. It addresses the requirement for EU Member States to maintain a central register of beneficial ownership information of corporate and other legal entities in their territory.

The UK already has a central register of this kind. However the requirements of the Directive are different from existing UK legislation. The paper highlights those areas, and outlines possible ways for amending UK requirements to meet our transposition obligations. We are seeking your views on the general approach proposed and on certain specific requirements.

**Issued:** 3 November 2016

**Respond by:** 16 December 2016

**Enquiries to:**

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Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
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This discussion paper is relevant to: UK corporate and legal entities; people who control or influence UK corporate and legal entities; third parties who provide services or advice to UK corporate legal entities; and investors, people or organisations who are interested in who controls or influences UK corporate and legal entities.

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<sup>1</sup> [www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive](http://www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive)

## Territorial extent

The Directive has application across the United Kingdom.

## How to respond

This discussion paper opened on 3 November 2016, and will close on 16 December 2016.

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the discussion paper form and, where applicable, how the views of members were assembled.

The discussion paper response form is available electronically on the consultation page: [www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register](http://www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register). The form can be submitted online, by email, or by letter:

Transparency and Trust team  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

Email: [transparencyandtrust@beis.gov.uk](mailto:transparencyandtrust@beis.gov.uk)

We would welcome suggestions of others who may wish to be involved in this discussion paper process.

You may make printed copies of this document without seeking permission. BEIS discussion papers are digital by default but if required printed copies of this discussion paper can be obtained from:

Email: [transparencyandtrust@beis.gov.uk](mailto:transparencyandtrust@beis.gov.uk)

Other versions of the document in Braille, other languages or audio-cassette are available on request.

## Additional copies

You may make copies of this document without seeking permission.

## Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the [GOV.UK website](#). This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)

## 2. Executive Summary

1. The UK Government is world leader in the charge against corruption and other financial crimes. As part of this, we already require companies to collect and keep information on those who ultimately own and control them, and to file that information on a central register of beneficial ownership. This is known as the register of people with significant control, or PSC register.
2. In that context, we are pleased that increasing corporate transparency is a key objective of the European Union's (EU) Fourth Money Laundering Directive ("the Directive"). On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
3. We therefore need to consider what changes are needed to implement the Directive in the UK. The majority of the Directive's provisions are in areas that are the responsibility of HM Treasury, who have issued a parallel consultation paper "Consultation on the Transposition of the EU Fourth Money Laundering Directive<sup>2</sup>." The Directive's provisions on corporate transparency (primarily Article 30) are, however, the responsibility of BEIS, and this discussion paper seeks views specifically on the approach to the implementation of that part of the Directive in conjunction with the relevant questions asked in HM Treasury's consultation. Responses to both will be taken into account by the relevant Department as final decisions are taken.
4. Article 30 has two main requirements: that EU Member States hold adequate, accurate and current information on beneficial ownership of corporate and other legal entities incorporated within their territory in a central register, and that such information should be made available to specific authorities and organisations across the EU. We believe that the existing UK PSC regime meets these requirements in most respects, but that some amendments and additions may be needed.
5. We propose that the rationale in determining whether an entity is in scope of the Directive is that it must be incorporated in the UK, and be constitutionally capable of having a beneficial owner. The information held on the register should increase transparency and be relevant to law enforcement in combatting money laundering.
6. For the information on beneficial ownership, we propose that such information should be adequate and accurate and current. In that, information that is solely "current", without being also "adequate" and "accurate", would not meet the Directive's requirements. Where there is a change to the entity's information, we propose amending the existing PSC requirement to update from at least once every 12 months to a shorter timescale within 6 months of the change.

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<sup>2</sup> [www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive](http://www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive)

7. The vast majority of the information on the UK PSC register is publicly accessible, online, and fully searchable by anyone in any country, free of charge. Because the UK strongly believes in the principle of corporate transparency, we propose that this principle is applied in a similar manner for the new entities brought into scope. There is, however, a small proportion of the PSC information which is suppressed from the public register. As a requirement of the Directive we will make this protected information available to credit and financial institutions, as defined in the Directive.
8. The Directive requires Member States to transpose it into national law by June 2017. We are therefore seeking views in response to this discussion paper by [date], in order that necessary legislation can then be prepared and administrative preparations made to enable us to meet that deadline.
9. This discussion paper is most relevant for:
  - a) companies and Limited Liability Partnerships (and their representative bodies) already subject to PSC register obligations, in respect of changes in the frequency of updating information on the register;
  - b) other legal entities not subject to PSC register obligations, (see illustrative list below) who will wish to comment on the scope of the Directive and the Government's rationale for applying the Directive to them. This includes prescribed markets such as the AIM and ISDX markets, companies listed on those markets and their representative bodies;
  - c) bodies interested in accessing the information that will be held on a central register of beneficial ownership across law enforcement and "obliged entities" to civil society and anti-corruption campaigners;
  - d) professional advisers and service providers for legal entities that are/may come into scope of the Directive.
10. As indicated in the HMT consultation, examples of types of legal entity that were not in scope of our domestic PSC legislation which we now need to consider alongside the broader scope of the Directive are:
  - European Economic Interest Groupings
  - Unregistered Companies
  - Open Ended Investment Companies (OEICs)
  - Investment Companies with Variable Capital
  - Co-operative/ community benefit societies
  - Building Societies
  - Friendly Societies
  - Credit Unions
  - European Cooperative Society (SCE)
  - Charitable Incorporated Organisations (CIOs)
  - European Groupings of Territorial Cooperation (EGTC)
  - Scottish Partnerships and Scottish Limited Partnerships
  - Royal Chartered Bodies

### 3. Introduction

11. In 2015 the European Union (EU) adopted the directive on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (2015/849<sup>3</sup>). This is known as the Fourth Money Laundering Directive (“the Directive”), and Member States are required to implement it in domestic law by June 2017.
12. The Government is consulting separately on the steps that it proposes to take, or should take, to meet UK’s obligation to implement the Directive, as a whole, into UK law. This wider consultation was published by HM Treasury on 15 September and will close on 10 November 2016<sup>4</sup>. This discussion paper addresses the transposition of one specific part of the Directive, for which responsibility lies with the Department for Business, Energy and Industrial Strategy (BEIS), namely the provisions of Article 30 on beneficial ownership.
13. Article 30 requires Member States to ensure that adequate, accurate and current information on the beneficial ownership<sup>5</sup> of corporate and other legal entities incorporated within their territory is held in a central register. It also requires Member States to allow access to that information by law enforcement and other organisations which combat money laundering and other financial crimes.
14. The Government welcomes the Directive’s beneficial ownership requirements. We strongly believe that increasing transparency on who ultimately owns and controls corporate structures is a vital step in creating an environment of trust and accountability. This is an area in which the UK has shown global leadership. It was at the Lough Erne Summit in June 2013 during the UK’s G8 Presidency that leading nations first agreed to core principles and national action plans to tackle the misuse of companies and legal arrangements. And we have continued to lead international debate on these issues, most recently at the London Anti-Corruption Summit on 12 May 2016, where participants made a range of further commitments on the collection and sharing of beneficial ownership information.
15. The UK has already legislated to require transparency about the beneficial ownership of UK companies. The obligation on companies to maintain a register of people with significant control (“PSC register”) and provide this to the UK registrar of companies (“Companies House”) was put in place through the Small Business, Enterprise and Employment Act 2015<sup>6</sup>, and a subsequent suite of regulations in March 2016<sup>7</sup>. The

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<sup>3</sup> EU Fourth Money Laundering Directive (2015/849): <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>

<sup>4</sup> [www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive](http://www.gov.uk/government/consultations/transposition-of-the-fourth-money-laundering-directive)

<sup>5</sup> Beneficial Ownership is defined in article 3 (6) of the Directive

<sup>6</sup> Small Business, Enterprise and Employment Act 2015:

[www.legislation.gov.uk/ukpga/2015/26/contents](http://www.legislation.gov.uk/ukpga/2015/26/contents)

<sup>7</sup> The Register of People with Significant Control Regulations 2016; The European Public Limited-Liability Company (Register of People with Significant Control) Regulations 2016; and The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016:

[www.legislation.gov.uk/uksi/2016/339/contents/made](http://www.legislation.gov.uk/uksi/2016/339/contents/made); [www.legislation.gov.uk/uksi/2016/375/contents/made](http://www.legislation.gov.uk/uksi/2016/375/contents/made); and [www.legislation.gov.uk/uksi/2016/340/contents/made](http://www.legislation.gov.uk/uksi/2016/340/contents/made)

PSC register will be publicly accessible, enabling not just UK law enforcement but also anyone with an interest to find out who really owns and controls UK companies.

16. The UK's PSC register is one element in the range of corporate transparency, anti-money laundering and counter-terrorist financing measures that the Government has initiated or is planning. In the corporate governance landscape, the Government has prohibited bearer shares<sup>8</sup> and will be requiring all company directors to be natural persons with limited exceptions. At the 12 May London Anti-Corruption Summit the UK also announced that it will take steps to require foreign companies purchasing property or bidding for public contracts here to make information on their beneficial ownership available on a public register.
17. As noted previously, until EU exit negotiations are concluded, the UK remains a full member of the EU and will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the UK has left the EU.
18. We therefore need to consider what changes are needed to implement the Directive in the UK. We consider that our existing PSC regime is already consistent with its requirements in most respects, but that specific adjustments are needed in some areas. This discussion paper seeks views on approach to those points so we can bring forward the necessary legislative and administrative changes.
19. It should be noted that the Commission has proposed amendments to the Directive<sup>9</sup>. These are not considered in this document as they have not yet been agreed – they will now go through the usual EU negotiating process before being finalised as a Directive. The Government will address issues arising from that Directive if/when the substance is clear and the Directive has been formally adopted.

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<sup>8</sup> Bearer shares, or share warrants to the bearer, are unregistered shares owned by whoever physically holds the share warrant. This makes them anonymous and infinitely transferable, and an easy means of facilitating illicit activity such as tax evasion or money laundering.

<sup>9</sup> Add reference to text

## 4. The UK's Register of People with Significant Control

20. The **UK company law regime is founded on the principle of transparency**. In order to benefit from limited liability, companies are subject to disclosure requirements. As new forms of companies and other legal entities have been introduced over time, these disclosure requirements have been extended to those new forms. Typically, information is filed with Companies House. This ranges from basic information, such as the company's service address, through to details about ownership and financial information.
21. Companies House publishes this information. Anyone who wants to work with, or extend credit to, a company can use that information to understand the state of the company's ownership, governance and financial status. These measures reflect the importance of transparency and trust in the UK corporate environment, and help make the UK a great place to do business.
22. The **Small Business, Enterprise and Employment Act (SBEE) 2015 extended this transparency-based approach to the issue of beneficial ownership**. It amended the registration and disclosure obligations placed on companies, limited liability partnerships (LLPs) and Societates Europaeae (SEs) incorporated in the UK, requiring them also to obtain and hold information on those who own and control them - people with significant control (PSC)<sup>10</sup>. Since 6 April 2016, these corporate entities have been required to keep their own PSC registers. And from 30 June 2016 they have had to file their PSC information at Companies House at the time of their next confirmation statement. Companies House is responsible for holding and maintaining the UK's publicly accessible central register.

### Key features of the UK PSC register

23. We have used the Financial Action Task Force (FATF) 2012 definition<sup>11</sup> of a 'beneficial owner', applied in the anti-money laundering context, as the basis for our **statutory definition of a 'PSC'**. This is based on meeting one or more of the following five conditions:
- Holding, directly or indirectly, more than 25% of the shares in the company.

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<sup>10</sup> The SBEE Act 2015 requirements do not apply to UK companies in the following circumstances: those that are covered by other transparency rules, e.g., companies subject to Chapter 5 of the UK Financial Conduct Authority's Disclosure and Transparency Rules; companies with voting shares admitted to trading on a regulated market in the European Economic Area (other than the UK); or on specified markets in Switzerland, the USA, Japan and Israel.

<sup>11</sup> FATF defines "beneficial owner" as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement. Reference to "ultimately owns or controls" and "ultimate effective control" refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than direct control. This definition should also apply to beneficial owner of a beneficiary under a life or other investment linked insurance policy.

- Holding, directly or indirectly, more than 25% of the voting rights in the company.
  - Holding, directly or indirectly, the right to appoint or remove the majority of the board of directors of the company.
  - Otherwise having the right to exercise, or actually exercising, significant influence or control over the company.
  - Having the right to exercise, or actually exercising, significant influence or control over a firm or trust which is not a legal entity, but would itself satisfy any of the first four conditions in respect of the company if it were an individual.
24. We have based the **information required for the PSC register** on the successful company law precedent for a company director. The information which a corporate entity must file at Companies House is:
- Full name
  - Full date of birth
  - Nationality
  - Country, state or part of the UK where the PSC usually lives
  - Service address
  - Usual residential address
  - The date he or she became a PSC in relation to the corporate entity
  - An indication of the nature of the PSC's control over the corporate entity
25. One of the key features of the UK PSC register is that it is public. **The centrally held PSC register for companies, LLPs and SEs is publicly accessible, free of charge, and fully searchable online by anyone in any country.** The only information that will be suppressed on the public register will be a PSC's usual residential address (URA), day of date of birth, and information that is subject to the 'protection regime'.
26. The protection regime allows for the PSC information to be suppressed from the public register where public identification of the individual as a PSC would mean placing him or her at serious risk of violence or intimidation – whether due to the company's activities per se or the association of that particular individual with that particular company.
27. Companies House consider applications for the protection of information on a case-by-case basis, consulting relevant bodies such as UK law enforcement agencies.

## 5. UK's new corporate transparency obligations under the Fourth Money Laundering Directive

28. The question for the UK to address regarding the Directive is, therefore, whether it requires changes to the robust PSC regime we have in place. The Directive's underlying intentions are of course very similar to those of our PSC regime, but there are a number of points on which we consider that amendment may be required or where additional provision will need to be made.
29. **The key corporate transparency provision in the Directive is Article 30**, which sets out the obligations on Member States in respect of the collection and availability of information on beneficial ownership of corporate and other legal entities incorporated within their territory. Article 3(6) details the definition of a beneficial owner, and Recitals 12 to 14 describe the underlying intentions and justifications. Articles 30 and 3(6), as well as Recitals 12 to 14 are set out in full in Annex A.
30. The principal areas in which we consider that it may be necessary to amend or supplement the existing UK framework are as follows:
- the **scope** of the entities required to obtain and hold information. This is framed more broadly in the Directive than in UK PSC legislation. So we need to consider which other types of entity should be required to disclose information on beneficial ownership. This is discussed in Chapter 6;
  - the Directive's definition of a "beneficial owner" and **the information that needs to be collected** (also Chapter 6);
  - the Directive's requirements on the **quality of that information** – that it should be "adequate, accurate and current" (Chapter 7); and
  - the provisions on **access** to information on beneficial ownership. We intend to maintain our approach of having a fully public register of information on beneficial ownership, including for the types of entity brought within scope by the Directive. But there are issues, in particular on the approach to exceptions from this principle, on which we would appreciate views (Chapter 8).
31. The following sections of this discussion paper address each of these areas in greater detail and seek views on specific questions.

### Legal offences and penalties

32. We propose that the legal offences and penalties, which relate to the domestic PSC requirements, should apply to the new entities brought into scope by the Directive. This would ensure consistency and, more importantly, reduce the risk of certain entities becoming more attractive for money laundering or other criminal financing activities.

## Assessment of costs and benefits impact of Article 30

33. **We welcome comments on the costs and benefits resulting from the required compliance by UK.** We seek views not only in regards to the entities which would be newly brought into scope, but also the corporate entities currently fulfilling the PSC register requirements.

## 6. Scope

34. This chapter examines the range of corporate and other legal entities in the UK that should be required to obtain and hold information on beneficial ownership following implementation of the Directive. It also considers the related issues of: the approach to the nature and extent of beneficial interest held; and the register through which the information on beneficial ownership should be recorded.

### UK's rationale on legal entities

35. The overall rationale for the Directive, as a whole, is to protect the financial system and prevent money laundering. Some of its provisions are designed to increase transparency of corporate entities and make this information accessible to law enforcement and other bodies. Article 30 of the Directive requires that corporate and other legal entities incorporated in a Member State should “*obtain and hold adequate, accurate and current information on their beneficial ownership*”, and that this information be held in a central register, by 26 June 2017.
36. The introduction of the UK PSC register already imposes beneficial ownership disclosure requirements consistent with the Directive on companies limited by shares, companies limited by guarantee, unlimited companies, Community Interest Companies (CICs), LLPs and SEs. These types of entity amount to almost all of those in the UK that are in scope of the Directive.
37. Government has indicated in the HM Treasury consultation a range of other types of legal entity that were not in scope of our domestic PSC legislation in respect of which we now need to consider the introduction of beneficial ownership obligations to comply with the Directive's more broadly framed scope. These are:
- European Economic Interest Groupings
  - Unregistered Companies
  - Open Ended Investment Companies (OEICs)
  - Investment Companies with Variable Capital
  - Co-operative/ community benefit societies<sup>12</sup>
  - Building Societies
  - Friendly Societies
  - Credit Unions
  - European Cooperative Society (SCE)
  - Charitable Incorporated Organisations (CIOs)
  - European Groupings of Territorial Cooperation (EGTC)
  - Scottish Partnerships and Scottish Limited Partnerships
  - Royal Chartered Bodies

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<sup>12</sup> The Co-operative and Community Benefit Societies Act 2014 (CCBS Act) replaced the 'industrial and provident society' (IPS) legal form with two new legal forms: co-operative society and community benefit society. Existing industrial and provident societies remain registered but are now deemed 'pre-commencement societies' (generally referred to as 'registered societies'). These registered societies are in scope.

38. As the Department responsible for implementing that section of the Directive and taking into account initial responses to that consultation and views expressed by stakeholders, BEIS is now able to propose in more detail an approach to determining how and whether an entity might be in scope of the requirements to register information on beneficial ownership. Short descriptions of these entities are set out in Annex B. We would welcome views on whether there are any additional entities which should be considered and will take into account responses received by HM Treasury following the publication of this document.
39. We welcome the principle that UK competent authorities and financial intelligence units will, following implementation of the Directive, have access to information on the ownership and control of a broad range of entities across the EU, and that clearly requires that we reciprocate across a similar range of UK entities. However, we do not consider that all legal entities must be subject to the requirements of the Directive, particularly where there will be no transparency gain. We, therefore, propose the following **rationale in determining whether an entity is in scope of the Directive for the purposes of Article 30**, i.e. that details of the entity's beneficial ownership should be held on a central register:
- a. The **entity must be incorporated**. In this context, the standard legal meaning of incorporation is inferred, i.e. that the entity in question has 'legal personality'<sup>13</sup>.
  - b. The entity has been **incorporated in the UK** and has **not re-domiciled** (i.e. legally transferred its seat (or its incorporation) to another jurisdiction).
  - c. The entity must be **constitutionally capable of legitimately having a beneficial owner**<sup>14</sup>. If not, and the entity cannot amend its constitution to acquire beneficial ownership, it would clearly be inappropriate to seek to impose requirements for the collection and disclosure of information on beneficial ownership<sup>15</sup>. The information reported by entities to the central register should provide greater transparency over the entity and have value for enforcement purposes. For instance legal entities such as cooperative and community benefit societies, which are membership bodies that operate on a 'one member one vote' basis, already place on record details of their legal ownership and or management and could only have a beneficial owner if they had fewer than four members<sup>16</sup>.

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<sup>13</sup> Having legal personality means that the entity may in its own name: own property; enter into contracts; raise finance by taking loans and giving security over its assets in respect to the loans; issue share capital (if a company is limited by shares); and sue and be sued in relation to contracts and other legal issues.

<sup>14</sup> The consideration of whether or not a type of entity could or could not legitimately have a beneficial owner is a separate issue from whether any individual entity that could potentially have a beneficial owner actually has one.

<sup>15</sup> This is relevant to bodies that are incorporated under legislation other than the Companies Act 2006. The governing legislation may not permit the ownership, management and control structures to be varied. For example, Government arm's length bodies that have a degree of independence from the Government, have legal personality, and are quasi-corporate, but whose governance and control structures are fixed by legislation, such as NHS foundation trusts and sixth form colleges.

<sup>16</sup> Or a group comprising more than 25% of the membership collectively agreed to exercise their votes jointly in a pre-determined manner

40. Based on this rationale, we have provisionally assigned entities to one of three categories:
- UK incorporated entities, not already covered by domestic PSC legislation, which we consider are in scope of the Directive.
  - UK incorporated entities which we consider may fall outside the scope of the Directive.
  - UK arrangements and unincorporated entities that do not have legal personality and are not in scope.

**Question 1: The Government welcomes views on this approach for determining the scope of Article 30 and on any alternative methods which could be considered.**

## UK incorporated entities considered in scope

41. Based on our rationale, we consider that the entities listed below should be subject to the obligations of the Directive on the basis that they: have been incorporated in the UK; retain a presence in the UK; and are structured in a way that makes it possible for them to have beneficial ownership<sup>17</sup>. These entities will be required to place information on the central register without exception. Short descriptions of these entities are set out in Annex [B].
- European Co-operative Society (SCE), Open Ended Investment Companies (OEICs), and Investment Companies with Variable Capital (ICVCs)
  - Scottish Limited Partnerships
  - Scottish Partnerships, each of whose members is a limited company.
  - Unregistered Companies subject to the Unregistered Companies Regulations 2009. This includes some Royal Chartered bodies. (City of London Livery Companies, Guilds, and other learned societies and professional bodies, but not universities or overseas based bodies.)
42. **These entities are not subject to the domestic PSC legislation. We consider that new regulations would, therefore, be necessary to place an obligation on these entities to investigate and report to a central register** the details of their beneficial ownership.
43. On the basis of our initial analysis, we propose that the entities listed below should be subject to the obligations of the Directive on the basis that they are only required to place information on record where they do have a beneficial owner. Although these entities have been incorporated in the UK; retain a presence in the UK; and are

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<sup>17</sup> For clarity, to have beneficial ownership could mean either that an individual or a corporate body can directly own or control the entity, for example as a shareholder or trustee; or that there is individual or corporate body which may indirectly own or control it.

structured in a way that makes it possible for them to have beneficial ownership<sup>18</sup>, in practice, almost none of these entities will have a beneficial owner. These entities are already subject to registration and regulation requirements, and file updates and annual accounts with the relevant regulatory authority<sup>19</sup>. We believe there is no transparency or enforcement gain where no beneficial owner exists. Short descriptions of these entities are set out in Annex B.

- Building Societies
- Charitable Incorporated Organisations(CIOs), Scottish and Northern Irish CIOs
- Cooperative Societies and Community Benefit Societies<sup>20</sup>
- Credit Unions
- Friendly Societies

## UK incorporated entities which are not in scope

44. We believe that the following entities with legal personality are structured in such a way that they could not legitimately have a beneficial owner. They have **little similarity to corporate entities**. Based on our rationale, we consider that they do not fall in scope of the requirements of Article 30 of the Directive in respect of a central register of beneficial owners. Other provisions of the Directive may apply to them.

### Non-Departmental Public Bodies not already covered by PSC legislation

45. Non Departmental Public Bodies (NDPBs), such as the Arts Council England and British Council, are not part of the Crown and have their own legal personality. They are classified as “a body which has a role in the process of national government but is not a government department, or part of one, and which accordingly operates to a greater or lesser extent at arm’s length from ministers.” NDPBs are usually established in bespoke legislation or under the Companies Act. Those established under the Companies Act are already subject to the requirements of the PSC register. A small number of NDPBs have been established by Royal Charter.
46. NDPBs have varying degrees of operational autonomy and independence from ministers and the sponsoring department. They work within a strategic framework set by ministers and are directly accountable to ministers. Ultimately their existence is by the will of Parliament. They are headed by boards. Board members are usually appointed by ministers or by The Queen on the advice of ministers.

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<sup>18</sup> For clarity, to have beneficial ownership could mean either that an individual or a corporate body can directly own or control the entity, for example as a shareholder or trustee; or that there is individual or corporate body which may indirectly own or control it.

<sup>19</sup> Financial Conduct Authority, Charity Commission, Scottish Charity Regulator, Charity Commission for Northern Ireland

<sup>20</sup> The Co-operative and Community Benefit Societies Act 2014 (CCBS Act) replaced the ‘industrial and provident society’ (IPS) legal form with two new legal forms: co-operative society and community benefit society. Existing industrial and provident societies remain registered but are now deemed ‘pre-commencement societies’ (generally referred to as ‘registered societies’). These registered societies are in scope.

47. They are funded within the estimate of their sponsor Government department and publish their own annual report and accounts.

### Corporations Sole

48. A Corporation Sole is a single office holder usually undertaking a government, crown or religious function. The legal personality attaches to the function, rather than the person. For example, the “Secretary of State for Business, Energy and Industrial Strategy”; the “Mayor of London”, and the “Archbishop of Canterbury”. The function exists as a stand-alone office and has no ownership.
49. Although Corporations Sole are not able to have a beneficial owner, the single office holder themselves can be the beneficial owners of another, separate, entity. There are provisions in the PSC legislation to allow for a Corporation Sole to be recorded as such. Thus a company may record a natural person under their title as its PSC, rather than by name. We propose to carry forward this measure after transposition of the Directive.

### Further Education Corporations and Sixth Form Corporations

50. Sixth Form Colleges provide full-time education for 16-18 year olds, and Further Education Colleges provide full and part-time education for those over 18. Further education courses are generally up to the standard of GCE, A-level or NVQ Level 3. These bodies were taken out of local authority control by the Further and Higher Education Act 1992, and set up as autonomous institutions run by charities with governors or trustees with no external ownership. They can only be incorporated by ministerial permission. Individuals or organisations can make applications to the Secretaries of State for Education to be set up as a new statutory institution. However, any such institutions would have to be set up on the same basis. This statutory basis means that they are structured in a way where they cannot legitimately have a beneficial owner.

### Higher Education Corporations, and Royal Chartered incorporated Universities and University Colleges

51. Higher education courses are programmes leading to qualifications, or credits which can be counted towards qualifications, which are above the standard of GCE, A-levels or other Level 3 qualifications. They include degree courses, postgraduate courses and sub-degree courses such as those leading to HNCs or HNDs. As with Further Education Corporations, these entities that deliver such courses are free standing institutions underpinned either by the Further and Higher Education Act 1992 or through a Royal Charter granted by the reigning monarch of the time to the petitioners that granted the creation of the body proposed in the application. A new corporation can only be created by Parliamentary Order or Royal Charter. As with Further Education bodies, these are structured in a way where they cannot legitimately have a beneficial owner. .

## UK arrangements, unincorporated or overseas entities which are not in scope

52. The following types of entities are either unincorporated or incorporated outside of the UK, and we consider therefore fall out of scope of the Directive.

### The Crown

53. The Crown is a corporation sole that represents the legal embodiment of executive, legislative, and judicial governance. As part of the Crown, central government (e.g. government departments), non-Ministerial Government departments (e.g. Food Standards Agency, Charity Commission, Office of Gas and Electricity Markets) and Government Executive Agencies (UK Border Agency, Maritime and Coastguard Agency, Passport Service) all do not have their own separate legal personality and are out of scope of the Directive. This also applies to short term entities such as Temporary Advisory Bodies, Task Forces and Reviews and bodies set up by and reporting directly to Parliament such as the National Audit Office and Electoral Commission.

### Royal Chartered bodies which are re-domiciled

54. These are bodies established under a formal document issued by the reigning monarch, which have been set up in the UK, but are now based outside of the UK and have re-domiciled. Examples include the University of Toronto, and McGill University in Canada.

### Overseas Companies

55. The Directive clearly applies to entities incorporated within a Member State, so no company incorporated outside the UK can be considered within its scope. This is the case regardless of whether the company concerned is required to register information about its operations under the Overseas Companies Regulations 2009. However, UK incorporated subsidiaries of overseas companies are already subject to domestic PSC requirements.

### Partnerships and Limited Partnerships in England, Wales and Northern Ireland, but not in Scotland

56. Under the Partnership Act 1890, Partnerships and Limited Partnerships established in England, Wales and Northern Ireland do not have legal personality. To bring these entities into scope would go therefore beyond the scope requirements of the Directive. The position is different for partnerships and limited partnerships established in Scotland - see paragraph 41.

### Unincorporated Associations

57. An 'unincorporated association' is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit, e.g. a voluntary group or a sports club. There are no obligations to register an unincorporated association. They do not have legal personality, and individual members are personally responsible for any debts and contractual obligations. If

members wished to limit their liability, they would need to change their business structure. In the UK, many small charities, voluntary organisations and some membership-based organisations, including trade unions, are unincorporated associations. These organisations should not be considered as being within the Directive's scope<sup>21</sup>.

**Question 2. Do you agree with this analysis regarding the types of entity that should and should not be considered to be in scope of Article 30 of the Directive? Are there entities not listed above which should be considered in the context of determining the scope of Article 30?**

## Prescribed Markets

58. In implementing the PSC register, the Government has taken the view that legal entities already subject to equivalent reporting standards should not be subject to the new requirements. The legislation, therefore, exempts UK companies admitted to trading on UK regulated markets, such as the London Stock Exchange Main Market, or prescribed markets such as the Alternative Investment Market (AIM), and the Intercapital Securities and Derivatives Exchange (ISDX) Growth Market<sup>22</sup>, as well as UK and non-UK entities admitted to trading on other regulated markets in the European Economic Area (EEA) or on certain markets in Japan, the USA, Switzerland and Israel. In 2014, before the negotiations on this Directive concluded, we noted in our first discussion paper on the scope of the domestic PSC legislation that this exemption would be subject to the outcome of ongoing negotiations about the scope. The Directive allows an exemption to its beneficial ownership requirements for companies listed on regulated markets but does not expressly also exclude those listed on prescribed markets, regardless of the nature of existing disclosure requirements. **We are, therefore, considering that it may be necessary to bring companies listed on markets, such as AIM and ISDX, within the scope of UK PSC register as part of our implementation.** We would appreciate views on the impact of this and potential transitional arrangements to aid our further consideration of this point.

**Question 3. What would be the potential costs and benefits of companies on UK prescribed markets also having to comply with UK PSC register requirements from June 2017? Please provide evidence where possible.**

**Question 4. If UK companies on UK prescribed markets were to be brought into scope, what transitional arrangements would be necessary or helpful?**

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<sup>21</sup> Although trade unions do have a quasi-corporate status, in that, they are able to make contracts and sue and be sued, they are not a corporate body and therefore are not a legal person.

<sup>22</sup> Collectively known as 'DTR5 Issuers' as they comply with Chapter 5 of the Financial Conduct Authority (FCA) Disclosure Rules and Transparency Rules. DTR5 requirements apply to companies listed on both regulated and prescribed markets in the UK.

## ‘Control’

59. Article 3(6) of the Directive (reproduced at Annex A) sets out a definition of a “beneficial owner” of a corporate entity that triggers the requirement for inclusion on a register. Article 30(5) of the Directive builds on this, requiring that the information on beneficial ownership recorded should include “the nature and extent of the beneficial interest held”. Recital 14 refers more specifically to the “nature and extent of the beneficial interest held consisting of its approximate weight”.
60. The UK’s PSC register meets these requirements in regards to the corporate entities our legislation covers. It sets out five conditions which could lead to person being considered to be a PSC of a company, relating to the level of shareholding or voting rights, the ability to appoint company directors and other means of exercising control. The legislation varies the conditions for the circumstances of different corporate entities whilst ensuring that a similar degree of ‘control’ is always required for a person to be considered a PSC. For example, the provisions **for companies differ from those for LLPs because the latter do not issue shares**.
61. **In defining who is the beneficial owner of new entities in scope of the Directive, we intend to adopt an approach consistent with the definition of ‘exercising significant control’ for companies under the PSC regime. The definition of beneficial owner in the Directive references voting rights, ownership interests and control by other means. We would meet the requirement for information on beneficial ownership by modifying each of the five conditions as necessary in relation to the entities in scope.** To illustrate, the five conditions as they apply to companies and LLPs in the existing legislation are as follows:

Condition	Companies and SEs	LLPs
<b>1st</b>	An individual is a PSC if they hold, directly or indirectly, more than 25% of the shares in the company.	An individual is a PSC if they hold, directly or indirectly, rights over more than 25% of the surplus assets on winding up.
<b>2nd</b>	An individual is a PSC if they hold, directly or indirectly, more than 25% of the voting rights in the company.	An individual is a PSC if they hold, directly or indirectly, more than 25% of the voting rights in the LLP.
<b>3rd</b>	An individual is a PSC if they hold, directly or indirectly, the right to appoint or remove the majority of the directors in the company.	An individual is a PSC if they hold, directly or indirectly, the right to appoint or remove the majority of those entitled to take part in management of the LLP.
<b>4th</b>	An individual is a PSC of the company if they have the right to exercise, or actually exercises, significant influence or control.	An individual is a PSC of the LLP if they have the right to exercise, or actually exercises, significant influence or control.

Condition	Companies and SEs	LLPs
5th	An individual is a PSC of the company if they have the right to exercise, or actually exercises, significant influence or control over the activities of a trust or a firm, which in turn satisfies any of the first four conditions.	An individual is a PSC of the LLP if they have the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm, which in turn satisfies any of the first four conditions.

**Question 5. We welcome views as to what modifications to these conditions would be required in respect of any of the different types of entity listed at paragraph [39].**

62. The current PSC legislation is also consistent with the Directive's requirement for the register to include information on the 'nature and extent' of control. For both companies and LLPs, it requires that the register show the extent of the holding where any of the first two conditions are met. The register must also show significant influence or control over holdings of:
- (i) More than 25%, but not more than 50%;
  - (ii) More than 50% but not more than 75%; and
  - (iii) 75% or more.
63. These thresholds were chosen due to their significance in the case of a standard limited company with shares. Control of more than 50% of shares or voting rights of such a company gives the ability to vote through an ordinary resolution, and control of more than 75% gives the ability to vote through a special resolution. A holding between 25% and 50% gives the ability to block a special resolution.
64. Again, **the Government's intention is to introduce similar requirements to the new entities that we consider will need to be brought within scope for the implementation of the Directive.** We would be grateful for views as to the specific points we will need to take into account when developing this approach for any of the types of entity listed at paragraph 37.

**Question 6. Do you have views on the definition of 'significant control' and the requirement to record the 'nature and extent of control' for the additional types of entity to be brought within scope? Are there particular issues to which you would draw our attention regarding the application of this approach to any of the types of entity listed at paragraph 37?**

## The register

65. The Directive requires information on beneficial ownership to be held on a “central register”. The Government considers that the existing landscape of registers is consistent with this requirement.
66. The UK has a number of ‘central’ registers of information on companies, such as the registers of shareholders or members, and register of directors. Most of these are held at Companies House. From June 2016 Companies House has held the central register of PSC information. The Government proposes that information on ownership and control arrangements for legal entities subject to the Directive should also be held at Companies House.
67. The Directive requires access to the information on beneficial ownership by obliged entities<sup>23</sup> and others (see chapter 11). So, while data may be held on physically separate registers in different actual locations, **a common approach to access and sharing of information will be necessary**. We are aware that the longer term transparency and enforcement objective is that the company and beneficial ownership register(s) of all EU Member states will be interconnected and thus mutually accessible. We will consider how best to put the necessary arrangements in place to meet these requirements.

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<sup>23</sup> Obligated entities are defined in article 2 of the Directive. They includes credit institutions, banks and other financial institutions, professionals such as lawyers, accountants, financial advisers, estate agents and trust and company service providers and others.

## 7. Adequate, accurate and current information

68. Article 30(4) of the Directive requires that “information held in the central register [...] is adequate, accurate and current”. This information is further qualified by Recital 14 and Article 30(1). The former sets out the intention of the Directive that the information on beneficial ownership is “in addition to basic information such as the company name and address and proof of incorporation and legal ownership”. The latter suggests that information on beneficial ownership should include “the details of the beneficial interests held”.
69. The UK regime clearly meets these requirements as regards to the ‘adequacy’ of information provided by those entities already within scope of the PSC register. This is because the PSC rules require provision of the PSC’s: full name; full date of birth; nationality; country, state or part of the UK where the PSC usually lives; service address; usual residential address; the date the individual became a PSC; and the nature of the PSC’s control over the corporate entity<sup>24</sup>.
70. We also see no need for change to our existing approach with regards to the requirements on the accuracy of information. The PSC legislation builds on existing company law in that it is a criminal offence to provide false information to Companies House, and requires both the corporate entity and the PSC to ensure the information on the register is accurate<sup>25</sup>. Furthermore, we believe that by being publicly accessible the PSC register benefits from scrutiny by the public at large, with inaccuracies capable of being flagged by all those who view and use the information.
71. **For new entities brought into scope, we therefore propose placing obligations on not only the corporate entity but also its PSC(s) to ensure the information entered is accurate.**
72. As to the frequency of updating information, those entities within scope of the PSC register are required to update their PSC information with Companies House at least once every 12 months via the Confirmation Statement (previously known as the Annual Return). **We consider that this may not fully meet the Directive’s requirement for the information to be “current”. Since at the extreme there could be a gap of 11 months between a change in PSC information and the notification of the change on the public register.**

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<sup>24</sup> This sits alongside the wider information required on incorporation: the entity’s name; its registration number, i.e. the unique reference number allocated once it is incorporated; and information on its legal owner.

<sup>25</sup> We have placed obligations on the company to identify and confirm their PSC(s), and provide this information to Companies House. Where there is a change to its PSC(s), they must update their information with Companies House. For the PSC, we have required that the individual must consider whether they meet one or more of the conditions of being a PSC (see paragraph [20]); respond to any requests or to confirm information from their corporate entity; alert the corporate entity that they are its PSC; and update the corporate entity if his or her information changes.

73. We are, however, conscious of the need for our approach on this point to be proportionate and pragmatic. In some cases it will take time to identify the new PSC(s) of an entity in the event of a change of significant control, and it is obviously **important that an unduly short deadline for updating the register should not put at risk the ‘adequacy’ and ‘accuracy’ of the information which the Directive also requires**. As there are many different types of corporate and legal entities within scope of the Directive, how frequently their information on beneficial ownership could be updated whilst meeting the requirement to be “adequate, accurate and current” is also likely to vary.
74. **We therefore propose introducing a new obligation to update the information within six months of any change to an entity’s PSC(s)**. For those entities already covered by the PSC requirements, this new obligation would be applied alongside the Confirmation Statement.

**Question 7. Do you agree with our proposed approach to ensuring the ‘accuracy’ and ‘adequacy’ of PSC information? Namely, to retain the arrangements as they are for entities already covered by the PSC register and extend the same approach to those brought within scope by the Directive?**

**Question 8. Do you agree with our analysis on the need for change to ensure that information is ‘current’? Is six months an appropriate period to allow an entity to update its PSC information following any change? If not, why not?**

**Question 9. For entities which already fulfil domestic PSC requirements: Do you expect any changes in terms of who, within the corporate entity, will be involved and how long it will take for the corporate entity to update PSC information as a result of changing the frequency of updates from 12 months to within 6 months of a change?**

## 8. Access to information on beneficial ownership

75. Article 30 of the Directive (see Annex A) includes a number of requirements regarding access to the information held on beneficial ownership registers. This goes to the heart of the objective of the Directive, namely for information on beneficial ownership to be available to law enforcement and other authorities to help prevent money laundering and other financial crimes.
76. With certain exceptions (discussed at paragraphs [80-83] below), Article 30 requires access to information to be possible for: competent authorities; Financial Intelligence Units (FIUs); obliged entities<sup>26</sup>; and “any person or organisation that can demonstrate a legitimate interest”.
77. The UK PSC register clearly meets all these requirements because it is, of course, publicly accessible via the Companies House website. From 30 June 2016 the information has been fully searchable online by anyone, without charge. The information which will show on the public register are the PSC’s:
- Full Name
  - Date of birth (month and year)
  - Nationality
  - Country, state or part of the UK where the PSC usually lives
  - Service address
  - The date he or she became a PSC in relation to the company
  - An indication of the nature of the PSC’s control over the company
  - Any restrictions on disclosing the PSC’s information that are in place
78. **For new entities brought into scope by the Directive, it is our intention that information on beneficial ownership should be publicly accessible in a similar manner to that of the PSC register.** The precise arrangements for this will, however, depend on the mechanisms put in place across our existing registry landscape (see paragraphs 65 to 67).

### **Question 10. Are there any practical implications that publicly accessible information will have for particular types of entity that you would like to draw to our attention?**

79. To protect PSCs from identity theft and fraud their day of date of birth and their usual residential addresses are not available on the public register, but it is still a requirement for an entity to hold this information and to file it at Companies House.
80. We will extend access to URAs for financial intelligence units, competent authorities, obliged entities as defined in Article 30(5).

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<sup>26</sup> Obligated entities are defined in article 2 of the Directive.

**Question 11. Are there any practical implications for extending access to usual residential address information to financial intelligence units, competent authorities and obliged entities as defined in the Directive?**

## Exceptions

81. Article 30(5) (a) requires that there can be no exceptions to enabling access to information on beneficial ownership by law enforcement: “Member States shall ensure that the information on the beneficial ownership is accessible in all cases to competent authorities and FIUs, without any restriction”. This is of course a fundamental requirement for a register of beneficial ownership to help prevent and deter money laundering and other financial crimes, and the existing UK regime is fully compliant with this. **All PSC information in respect of entities currently within scope is available to law enforcement without exception. We will ensure this is also the case for new entities brought within scope by the Directive.**
82. Article 30 does, however, permit an exception to information access by those that are not competent authorities, FIUs and obliged entities “where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable”. The Article requires that such exemption can only be granted “on a case-by-case basis in exceptional circumstances”.
83. The Government considers that the ‘**protection regime**’ which we have put in place for the PSC register largely implements this provision. This is because the protection regime allows information regarding PSCs who would be at serious risk of violence or intimidation due to the company’s activities or their association with the company to protect all of their PSC information by suppressing it from the public register. Companies House have to consider applications for ‘protection’ on a case-by-case basis, taking advice from law enforcement authorities before coming to a view. **We intend to extend this regime including the access set out in paragraph 60 to information on new entities brought within scope by the Directive.**

**Question 12. Are there specific issues we should be aware of regarding the application of this approach to beneficial owners of the new entities brought within scope by the Directive?**

**Question 13. Are there specific issues we should be aware of in allowing access of protected information to credit and financial institutions?**

## 9. Consultation questions

1.	<b>The Government welcomes views on this approach for determining the scope of Article 30 and on any alternative methods which could be considered.</b>
2.	<b>Do you agree with this analysis regarding the types of entity that should and should not be considered to be in scope of Article 30 of the Directive? Are there entities not listed above which should be considered in the context of determining the scope of Article 30?</b>
3.	<b>What would be the potential costs and benefits of companies on UK prescribed markets also having to comply with UK PSC register requirements (from June 2017)? Please provide evidence where possible.</b>
4.	<b>If UK companies on UK prescribed markets were to be brought into scope, what transitional arrangements would be necessary or helpful?</b>
5.	<b>We welcome views as to the nature of the modifications to these conditions that would be required in respect of any of the different types of entity listed at paragraph 40 above.</b>
6.	<b>Do you have views on the definition of ‘significant control’ and the requirement to record the ‘nature and extent of control’ for the additional types of entity to be brought within scope? Are there particular issues to which you would draw our attention regarding the application of this approach to any of the types of entity listed at paragraph 40?</b>
7.	<b>Do you agree with our proposed approach to ensuring the ‘accuracy’ and ‘adequacy’ of PSC information? Namely, to retain the arrangements as they are for entities already covered by the PSC register and extend the same approach to those brought within scope by the Directive</b>
8.	<b>Do you agree with our analysis on the need for change to ensure that information is ‘current’? Is six months an appropriate period to allow an entity to update its PSC information following any change? If not, why not?</b>
9.	<b>For entities which already fulfil domestic PSC requirements: Do you expect any changes in terms of who within the corporate entity will be involved and how long it will take to the corporate entity to update PSC information as a result of changing the frequency of updates from 12 months to within 6 months of a change?</b>
10.	<b>Are there any practical implications that publicly accessible information will have for particular types of entity that you would like to draw to our attention?</b>
11.	<b>Are there any practical implications for extending access to usual residential address information to financial intelligence units, competent authorities and obliged entities as defined in the Directive, and those with legitimate interest?</b>

**12 Are there specific issues we should be aware of regarding the application of this approach to beneficial owners of the new entities brought within scope by the Directive**

**13 Are there specific issues we should be aware of in allowing access of protected information to credit and financial institutions?**

## 10. What happens next?

84. We will use the responses to this discussion paper to inform the draft regulations necessary to transpose Article 30 of the Fourth Money Laundering Directive. The timetable of laying the necessary regulations before Parliament is subject to the separate legislation underpinning the different entities. In any event, we intend for all measures to be in force within the requirements of the Directive.
85. Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 26 June 2017. They are also required to inform the European Commission of such measures.

# Annex A: Fourth Money Laundering Directive Text

## Article 30

**Article 30(1).** Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held. Member States shall ensure that those entities are required to provide, in addition to information about their legal owner, information on the beneficial owner to obliged entities when the obliged entities are taking customer due diligence measures in accordance with Chapter II.

**Article 30(2).** Member States shall require that the information referred to in paragraph 1 can be accessed in a timely manner by competent authorities and FIUs.

**Article 30(3).** Member States shall ensure that the information referred to in paragraph 1 is held in a central register in each Member State, for example a commercial register, companies register as referred to in Article 3 of Directive 2009/101/EC of the European Parliament and of the Council (1), or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.

**Article 30(4).** Member States shall require that the information held in the central register referred to in paragraph 3 is adequate, accurate and current.

**Article 30(5).** Member States shall ensure that the information on the beneficial ownership is accessible in all cases to: (a) competent authorities and FIUs, without any restriction; (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; (c) any person or organisation that can demonstrate a legitimate interest. The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held. For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof.

**Article 30(6).** The central register referred to in paragraph 3 shall ensure timely and unrestricted access by competent authorities and FIUs, without alerting the entity concerned. It shall also allow timely access by obliged entities when taking customer due diligence measures.

**Article 30(7).** Member States shall ensure that competent authorities and FIUs are able to provide the information referred to in paragraphs 1 and 3 to the competent authorities and to the FIUs of other Member States in a timely manner.

**Article 30(8).** Member States shall require that obliged entities do not rely exclusively on the central register referred to in paragraph 3 to fulfil their customer due diligence requirements in accordance with Chapter II. Those requirements shall be fulfilled by using a risk-based approach.

**Article 30(9).** Member States may provide for an exemption to the access referred to in points (b) and (c) of paragraph 5 to all or part of the information on the beneficial ownership on a case-by-case basis in exceptional circumstances, where such access would expose the beneficial owner to the risk of fraud, kidnapping, blackmail, violence or intimidation, or where the beneficial owner is a minor or otherwise incapable. Exemptions granted pursuant to this paragraph shall not apply to the credit institutions and financial institutions, and to obliged entities referred to in point (3)(b) of Article 2(1) that are public officials.

**Article 30(10).** By 26 June 2019, the Commission shall submit a report to the European Parliament and to the Council assessing the conditions and the technical specifications and procedures for ensuring the safe and efficient interconnection of the central registers referred to in paragraph 3 via the European central platform established by Article 4a(1) of Directive 2009/101/EC. Where appropriate, that report shall be accompanied by a legislative proposal.

## Other relevant article and recitals

Article 3(6) defines beneficial owner of a corporate entity as:

“any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted and includes at least:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Union law or subject to equivalent international standards which ensure adequate transparency of ownership information. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a natural person shall be an indication of direct ownership. A shareholding of 25 % plus one share or an ownership interest of more than 25 % in the customer held by a corporate entity, which is under the control of a natural person(s), or by multiple corporate entities, which are under the control of the same natural person(s), shall be an indication of indirect ownership. This applies without prejudice to the right of

Member States to decide that a lower percentage may be an indication of ownership or control. Control through other means may be determined, inter alia, in accordance with the criteria in Article 22(1) to (5) of Directive 2013/34/EU of the European Parliament and of the Council (3);

(ii) if, after having exhausted all possible means and provided there are no grounds for suspicion, no person under point (i) is identified, or if there is any doubt that the person(s) identified are the beneficial owner(s), the natural person(s) who hold the position of senior managing official(s), the obliged entities shall keep records of the actions taken in order to identify the beneficial ownership under point (i) and this point; [...]"

Recital 12 states: "There is a need to identify any natural person who exercises ownership or control over a legal entity. In order to ensure effective transparency, Member States should ensure that the widest possible range of legal entities incorporated or created by any other mechanism in their territory is covered. While finding a specified percentage shareholding or ownership interest does not automatically result in finding the beneficial owner, it should be one evidential factor among others to be taken into account. Member States should be able, however, to decide that a lower percentage may be an indication of ownership or control."

Recital 13 states: "Identification and verification of beneficial owners should, where relevant, extend to legal entities that own other legal entities, and obliged entities should look for the natural person(s) who ultimately exercises control through ownership or through other means of the legal entity that is the customer. Control through other means may, inter alia, include the criteria of control used for the purpose of preparing consolidated financial statements, such as through a shareholders' agreement, the exercise of dominant influence or the power to appoint senior management. There may be cases where no natural person is identifiable who ultimately owns or exerts control over a legal entity. In such exceptional cases, obliged entities, having exhausted all other means of identification, and provided there are no grounds for suspicion, may consider the senior managing official(s) to be the beneficial owner(s)."

Recital 14 states: "The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise hide their identity behind a corporate structure. Member States should therefore ensure that entities incorporated within their territory in accordance with national law obtain and hold adequate, accurate and current information on their beneficial ownership, in addition to basic information such as the company name and address and proof of incorporation and legal ownership. With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a central database which collects beneficial ownership information, or the business register, or another central register. [...]"

## Annex B: Further details on UK incorporated entities

Entity	Details
<b>Building Societies</b>	Building societies are a form of mutual financial organisation that is owned by its members usually on the basis of one member one vote. Building societies are funded substantially by their members. Building societies can no longer accept corporate bodies as shareholders <sup>27</sup> , nor raise funds from corporate bodies <sup>28</sup> . Existing corporate shareholders were able to retain their share rights. In addition a building society can be owned by another building society.
<b>Charitable Incorporated Organisations (CIOs)</b>	Charitable Incorporated Organisations are a recently introduced charitable legal entity form that has legal personality and limited liability for its members and trustees. Whereas charitable companies (usually companies limited by guarantee) have to register with both Companies House and the Charity Commission. CIOs only have to register with the Charity Commission, but are subject to much of the UK's Companies Act. Charitable organisations, including CIOs, can have corporate trustees.
<b>Cooperative Societies and Community Benefit Societies<sup>29</sup></b>	<p>Cooperative societies are membership organisations run for the mutual benefit of their members. Cooperatives are incorporated and a member's liability is limited to the amount unpaid on shares. They have a principle of open membership and can therefore raise funds by issuing shares to the public. They are run and managed by their members, usually through a committee of officers that manages the organisation on members' behalf. Members have democratic control on a 'one member one vote' basis regardless of the size of their shareholding.</p> <p>Community benefit societies ("BenComs") are similar to cooperative societies except that they conduct business for the benefit of their community rather than member of the society. This means, profits are not distributed among its members, or external shareholders, but instead are returned to the community. BenComs also often apply an asset lock to protect their assets for the future benefit of the community. Unlike cooperatives, BenComs can be established as charities, providing they have exclusively charitable objects that are for the public benefit. This allows them to raise capital through public grants and charitable trusts.</p>

<sup>27</sup> The Building Societies Act 1986

<sup>28</sup> The Building Societies Act 1997

<sup>29</sup> The Co-operative and Community Benefit Societies Act 2014 (CCBS Act) replaced the 'industrial and provident society' (IPS) legal form with two new legal forms: co-operative society and community benefit society. Existing industrial and provident societies remain registered but are now deemed 'pre-commencement societies' (generally referred to as 'registered societies').

Entity	Details
<b>Credit Unions</b>	Credit unions are cooperative financial institutions that are owned and controlled by their members (on the basis of 'one member one vote'). Credit unions are operated for the purpose of providing credit at reasonable rates, and other financial services to its members. Profits are shared evenly among saving accounts and or reinvested to improve the service provided to members. There are no external shareholders.
<b>European Cooperative Society (SCE)</b>	A SCE is an EU body corporate that allows for cross border cooperatives to be created. A SCE may be formed from five or more natural or legal persons resident in at least two EU Member States; by a merger between cooperatives; or by the conversion of a cooperative.
<b>Friendly Societies</b>	<p>Friendly Societies are mutual associations for the purposes of insurance, pensions, savings or cooperative banking. They are funded by membership contributions and any returns of investments of those contributions. They operate on the basis of 'one member one vote' and have no external shareholders.</p> <p>The Friendly Societies that are incorporated as a body corporate, i.e. those established after the Friendly Societies Act 1992<sup>30</sup>, or were established before that Act, but re-registered under it, are liable to be subject to the Directive. Incorporated friendly societies are able to hold assets in its name rather than in its trustees. They are also able to form or acquire subsidiary companies or jointly controlled bodies in their own name.</p>
<b>Open Ended Investment Companies (OEICs) and Investment Companies with Variable Capital (ICVCs)</b>	An OEIC is a body corporate that owns and manages investments (of various types) in order to give its members the benefits of spreading investment risk and the benefits of the management of the funds by or on behalf of the company. All such companies in the UK have the letters "ICVC" at the end of the company name.
<b>Royal Chartered bodies (except universities, university colleges, and overseas based companies)</b>	<p>A Royal Charter is a formal document issued by the reigning monarch as letters patent, granting a right or power to an individual or a body corporate. They were, and are still, used to establish significant organisations such as cities (with municipal charters) or universities. Before the introduction of the UK's first Companies Acts in the mid-nineteenth century, the only means by which an incorporated body could be formed was by Royal Charter, letters patent or under company-specific Acts of Parliament.</p> <p>A Royal Charter is a way of incorporating a body that turns a collection of individuals into a single legal entity. A body incorporated by Royal Charter has all the powers of a natural person, including the power to sue and be sued in its own right. There are over 900 chartered bodies. In modern times, the grant of new Charters is comparatively rare.</p>

<sup>30</sup> Friendly Societies established before 1992 and not re-registered are not a corporate body and therefore not in scope.

Entity	Details
	<p>Amendments to Charters can be made only with the agreement of The Queen in Council, and amendments to the body's by-laws require the approval of the Council, and not normally by Her Majesty.</p> <p>We consider that the Chartered bodies which should be in scope are principally the City of London Livery Companies, Guilds and other learned and professional bodies. They are largely membership bodies set up to further the interests of their profession and their members. Many undertake to promote excellence in their profession, establish guidance, and perform regulatory functions. Others have representative functions. Some of these bodies' aim is to bring the work of their profession to a wider audience through educational and charitable activities.</p> <p>Other Chartered bodies are out of scope because, largely, they are based overseas or constitutionally cannot have a beneficial owner.</p>
<b>Scottish Partnerships and Scottish Limited Partnerships</b>	<p>The Partnerships and Limited Partnerships that are incorporated in Scotland have legal personality under the Partnership Act 1890. This means, in addition to being able to have individuals and/or limited companies as partners, it is possible for such entities to have beneficial ownership.</p>
<b>Unregistered Companies</b>	<p>These are companies that are formed for the purpose of carrying out a business whose sole object is the acquisition of gain by the body or its individual members but were incorporated other than by the UK's Companies Act or a public general enactment as specified under the Unregistered Companies Regulations 2009. As well as including a segment of companies incorporated by Royal Charter, they include companies incorporated by letters patent, deed of settlement, or other similar instruments.</p>

## Annex C: Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

[www.gov.uk/government/publications/consultation-principles-guidance](http://www.gov.uk/government/publications/consultation-principles-guidance)

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess  
BEIS Consultation Co-ordinator  
1 Victoria Street  
London  
SW1H 0ET

Tel: 020 7215 1661

Email: [angela.rabess@beis.gov.uk](mailto:angela.rabess@beis.gov.uk)

However if you wish to comment on the specific policy proposals you should contact:  
[transparencyandtrust@beis.gov.uk](mailto:transparencyandtrust@beis.gov.uk).

# Annex D: Transposition of Article 30 of the Fourth Money Laundering Directive discussion paper response form

The consultation is available at: [www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register](http://www.gov.uk/government/consultations/implementing-the-fourth-money-laundering-directive-beneficial-ownership-register)

The closing date for responses is **16 December 2016**.

Please return completed forms to:

Email: [transparencyandtrust@beis.gov.uk](mailto:transparencyandtrust@beis.gov.uk)

Postal address:

Transparency and Trust team  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

Please be aware that we intend to publish all responses to this discussion paper.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes.

If you want information, including personal data, that you provide to be treated in confidence, please explain to us what information you would like to be treated as confidential and why you regard the information as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

I want my response to be treated as confidential

Comments:

## Questions

Name:

Organisation (if applicable):

Address:

Please tick a box from the list of options below that best describes you or your organisation. This allows views to be presented by group type.

	<b>Respondent type</b>
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

**Question 1 (refer to relevant para numbers in consultation document)**

Open question inviting views on the main principle of a particular proposal

Comments:

**Questions 2 (refer to relevant para numbers in consultation document)**

For 'double-barrelled' questions, i.e. when 2 or 3 related questions are asked at the same time. For analysis and database design purposes, double-barrelled questions and their related responses have to be split back down into separate questions. This can lead to confusion over which part of the question a respondent is attempting to answer and sometimes parts of these types of questions are overlooked

**A**             Yes                       No                       Not sure

**B**             Yes                       No                       Not sure

Comments:

**Question 3 (refer to relevant para numbers in consultation document)**

Very helpful       Helpful       No change       Not very helpful

Comments:

**Question 4 (refer to relevant para numbers in consultation document)**

Yes             No                       Not sure

Comments:

**Question 5 (refer to relevant para numbers in consultation document)**

Question asking for rating score of various aspects of proposals and space for comments.

E.g. (On a scale of 1 to 5, 5 being the highest, grade your overall approval of the proposals)

	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>Right problems identified</b>	<input type="checkbox"/>				
<b>Range of options wide enough</b>	<input type="checkbox"/>				
<b>Preferred options well chosen</b>	<input type="checkbox"/>				

Comments:

**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comments:

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BEIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No



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