



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 7

#### COMPANIES: TRANSPARENCY

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

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

Schedule 3 amends the Companies Act 2006 to require companies to keep a register of people who have significant control over the company.

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

- (1) The Secretary of State must before the end of the review period—
  - (a) carry out a review of Part 21A of the Companies Act 2006 (inserted by Schedule 3 to this Act) and of other provisions of the Companies Act 2006 inserted by this Act that relate to that Part, and
  - (b) prepare and publish a report setting out the conclusions of the review.
- (2) The report must in particular—
  - (a) set out the objectives intended to be achieved by the provisions of the Companies Act 2006 mentioned in subsection (1)(a),
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way that imposed less regulation.
- (3) The Secretary of State must lay the report before Parliament.

- (4) The “review period” is the period of 3 years beginning with the day on which section 92 (duty to deliver confirmation statement instead of annual return) comes into force.

*Register of interests disclosed*

**83 Amendment of section 813 of the Companies Act 2006**

In section 813 of the Companies Act 2006 (register of interests disclosed: refusal of inspection or default in providing copy), in subsection (1), for the words “an order of the court” substitute “section 812”.

*Abolition of share warrants to bearer*

**84 Abolition of share warrants to bearer**

- (1) In section 779 of the Companies Act 2006 (issue and effect of share warrant to bearer), after subsection (3) insert—

“(4) No share warrant may be issued by a company (irrespective of whether its articles purport to authorise it to do so) on or after the day on which section 84 of the Small Business, Enterprise and Employment Act 2015 comes into force.”

- (2) For the heading of that section substitute “Prohibition on issue of new share warrants and effect of existing share warrants”.

- (3) Schedule 4—

- (a) makes provision for arrangements by which share warrants issued before this section comes into force are to be converted into registered shares or cancelled, and
- (b) makes amendments consequential on that provision.

**85 Amendment of company’s articles to reflect abolition of share warrants**

- (1) This section applies in the case of a company limited by shares if, immediately before the day on which section 84 comes into force, the company’s articles contain provision authorising the company to issue share warrants (“the offending provision”).

- (2) The company may amend its articles for the purpose of removing the offending provision—

- (a) without having passed a special resolution as required by section 21 of the Companies Act 2006;
- (b) without complying with any provision for entrenchment which is relevant to the offending provision (see section 22 of that Act).

- (3) Section 26 of the Companies Act 2006 sets out the duty of a company to send the registrar a copy of its articles where they have been amended.

- (4) Expressions defined for the purposes of the Companies Act 2006 have the same meaning in this section as in that Act.

## **86 Review of section 84**

- (1) The Secretary of State must, as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which section 84 comes into force—
  - (a) carry out a review of section 84, and
  - (b) prepare and publish a report setting out the conclusions of the review.
- (2) The report must in particular—
  - (a) set out the objectives intended to be achieved by the section, and
  - (b) assess the extent to which those objectives have been achieved.
- (3) The Secretary of State must lay the report before Parliament.

### *Corporate directors*

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

- (1) The Companies Act 2006 is amended as follows.
- (2) Omit section 155 (companies required to have at least one director who is a natural person).
- (3) In section 156 (direction requiring company to make appointment)—
  - (a) in subsection (1), for “section 155” substitute “provision by virtue of section 156B(4)”;
  - (b) in subsection (4), for “of section 154 or 155” substitute “as mentioned in subsection (1)”.
- (4) Before section 157 (and after the preceding cross-heading) insert—

### **“156A Each director to be a natural person**

- (1) A person may not be appointed a director of a company unless the person is a natural person.
- (2) Subsection (1) does not prohibit the holding of the office of director by a natural person as a corporation sole or otherwise by virtue of an office.
- (3) An appointment made in contravention of this section is void.
- (4) Nothing in this section affects any liability of a person under any provision of the Companies Acts or any other enactment if the person—
  - (a) purports to act as director, or
  - (b) acts as shadow director,although the person could not, by virtue of this section, be validly appointed as a director.
- (5) This section has effect subject to section 156B (power to provide for exceptions from requirement that each director be a natural person).
- (6) If a purported appointment is made in contravention of this section, an offence is committed by—
  - (a) the company purporting to make the appointment,

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- (b) where the purported appointment is of a body corporate or a firm that is a legal person under the law by which it is governed, that body corporate or firm, and
- (c) every officer of a person falling within paragraph (a) or (b) who is in default.

For this purpose a shadow director is treated as an officer of a company.

- (7) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales, to a fine;
  - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.

### **156B Power to provide for exceptions from requirement that each director be a natural person**

- (1) The Secretary of State may make provision by regulations for cases in which a person who is not a natural person may be appointed a director of a company.
- (2) The regulations must specify the circumstances in which, and any conditions subject to which, the appointment may be made.
- (3) Provision made by virtue of subsection (2) may in particular include provision that an appointment may be made only with the approval of a regulatory body specified in the regulations.
- (4) The regulations must include provision that a company must have at least one director who is a natural person (and for this purpose the requirement is met if the office of director is held by a natural person as a corporation sole or otherwise by virtue of an office).
- (5) Regulations under this section may amend section 164 so as to require particulars relating to exceptions to be contained in a company's register of directors.
- (6) The regulations may make different provision for different parts of the United Kingdom.

This is without prejudice to the general power to make different provision for different cases.

- (7) Regulations under this section are subject to affirmative resolution procedure.

### **156C Existing director who is not a natural person**

- (1) In this section “the relevant day” is the day after the end of the period of 12 months beginning with the day on which section 156A comes into force.
- (2) Where—
  - (a) a person appointed a director of a company before section 156A comes into force is not a natural person, and
  - (b) the case is not one excepted from that section by regulations under section 156B,

that person ceases to be a director on the relevant day.

- (3) The company must—
  - (a) make the necessary consequential alteration in its register of directors, and
  - (b) give notice to the registrar of the change in accordance with section 167.
- (4) If an election is in force under section 167A in respect of the company, the company must, in place of doing the things required by subsection (3), deliver to the registrar in accordance with section 167D the information of which the company would otherwise have been obliged to give notice under subsection (3).
- (5) If it appears to the registrar that—
  - (a) a notice should have, but has not, been given in accordance with subsection (3)(b), or
  - (b) information should have, but has not, been delivered in accordance with subsection (4),the registrar must place a note in the register recording the fact.”

## **88 Review of section 87**

- (1) The Secretary of State must, before the end of each review period—
  - (a) carry out a review of section 87, and
  - (b) prepare and publish a report setting out the conclusions of the review.
- (2) The report must in particular—
  - (a) set out the objectives intended to be achieved by the section,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in another way which imposed less regulation.
- (3) The Secretary of State must lay the report before Parliament.
- (4) Each of the following is a review period for the purposes of this section—
  - (a) the period of 5 years beginning with the day on which section 87 comes into force (whether wholly or partly), and
  - (b) each successive period of 5 years.

### *Shadow directors*

## **89 Application of directors’ general duties to shadow directors**

- (1) In section 170 of the Companies Act 2006 (scope and nature of general duties of directors) for subsection (5) substitute—
  - “(5) The general duties apply to a shadow director of a company where and to the extent that they are capable of so applying.”
- (2) The Secretary of State may by regulations make provision about the application of the general duties of directors to shadow directors.
- (3) The regulations may, in particular, make provision—

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- (a) for prescribed general duties of directors to apply to shadow directors with such adaptations as may be prescribed;
  - (b) for prescribed general duties of directors not to apply to shadow directors.
- (4) In this section—
- “director” and “shadow director” have the same meanings as in the Companies Act 2006;
  - “general duties of directors” means the duties specified in sections 171 to 177 of that Act;
  - “prescribed” means prescribed in regulations.
- (5) Regulations under this section are subject to affirmative resolution procedure.

## **90 Shadow directors: definition**

- (1) In section 251 of the Insolvency Act 1986 (expressions used generally), in the definition of “shadow director”, for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment (within the meaning given by section 1293 of the Companies Act 2006);
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (2) In section 22(5) of the Company Directors Disqualification Act 1986 (definition of “shadow director”) for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (3) In section 251(2) of the Companies Act 2006 (definition of “shadow director”) for the words “on advice given by him in a professional capacity” substitute “—
- (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under an enactment;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (4) In section 1293 of the Companies Act 2006 (meaning of “enactment”) after paragraph (a) insert—
- “(aa) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,”.

## 91 Shadow directors: provision for Northern Ireland

- (1) In Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) (interpretation), in the definition of “shadow director”, for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
  - (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.
- (2) In Article 2(2) of the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I. 4)) (interpretation), in the definition of “shadow director”, for the words from “(but” to the end substitute “, but so that a person is not deemed a shadow director by reason only that the directors act—
  - (a) on advice given by that person in a professional capacity;
  - (b) in accordance with instructions, a direction, guidance or advice given by that person in the exercise of a function conferred by or under a statutory provision;
  - (c) in accordance with guidance or advice given by that person in that person’s capacity as a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975)”.