

# Small Business, Enterprise and Employment Act 2015

## What you need to know

The Small Business, Enterprise and Employment Act (SBEEA) received Royal Assent on 26 March 2015. The SBEEA seeks to reduce the administrative burden on companies but also improve the quality of information filed at Companies House, enhance transparency and increase trust in UK businesses.

The SBEEA is very broad in scope - all companies will be impacted by at least some of the changes. Currently it is envisaged that the changes will be implemented in three main stages (in October 2015, January 2016 and April 2016 as noted below) - saving those with the largest impact for the final stage in April 2016. The key areas for consideration by companies are as follows:

## Provisional implementation date: October 2015

| Key change                                     | Description  |
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| <b>Shadow directors</b>                        | General directors' duties will apply to shadow directors (where and to the extent they are capable of applying) and shadow directors will be held accountable through the directors' disqualification regime.  |
| <b>Changes to the 'consent to act' process</b> | Instead of the 'consent to act' procedure (which is required on forms notifying Companies House of the appointment of a new director or secretary) it is proposed that there is a 'statement of truth' - a statement made by the company when filing a notice of appointment at Companies House that the relevant person has consented to act. Companies House will then notify the newly appointed officer giving them the opportunity (if they did not in fact consent to act) to apply to be removed from the public record. It is also proposed that Companies House will provide additional information to new directors at this point (such as details of their statutory duties). |
| <b>Date of birth information</b>               | Subject to certain exceptions, in order to help prevent identity theft the day of a director's and PSC's (see below) date of birth will be removed from the public register.   |
| <b>Strike offs</b>                             | The time it takes to strike a company off the register at Companies House will be effectively reduced by shortening various time periods (both in relation to voluntary strike offs (which will take about two months rather than 3 - 4 months) and strike offs instigated by the Registrar (which will take 3 - 4 months rather than 5 - 6 months)).  |

## Provisional implementation date: January 2016

| Key change   | Description  |
|--------------|--|
| PSC register | <p><b>This is undoubtedly the biggest change</b> - there will be a new requirement that companies investigate and obtain information on persons with ‘significant control’ over the company (known as <b>PSC’s</b>) and to file this information at Companies House from April 2016 (as noted below). Details of those persons will be held on a publicly available register at Companies House (subject to certain exclusions).</p> <p>A person with significant control will be any person who:</p> <ul style="list-style-type: none"><li>• holds, directly or indirectly, more than 25% of the shares in the company</li><li>• in the case of a company not having a share capital, holds a right or rights to a share in more than 25% of the capital or profits of that company</li><li>• is entitled to exercise, directly or indirectly, or to control the exercise of, more than 25% of the voting rights in that company</li><li>• is entitled, directly or indirectly, to appoint or remove, or to control the right to appoint or remove, a majority of the board of directors</li><li>• has the right to exercise, or actually exercises, ‘significant influence or control’ over the company - the Secretary of State is required to publish guidance as to what ‘significant influence or control’ means and an expert working panel has recently been established to draft this statutory guidance</li><li>• in the case of shares held by trustees of a trust or members of a partnership, they have the right to exercise, or actually exercise, significant influence or control over that trust or firm. This means that a settlor or beneficiary may need to be registered (if they exercise significant influence or control over the trust’s activities).</li></ul> <p>A company will need to collect certain information about any PSC’s and will have the power to request information from any person it knows or reasonably believes is a PSC. There will also be an obligation placed on PSC’s to notify the company when they obtain a relevant interest or there is a change in their</p> |

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|  | <p>interest (which would necessitate a change to the PSC register). Companies and individuals may face criminal penalties for failure to provide, or for deliberately providing false, information.</p> <p>These new requirements are likely to be onerous (especially whilst they become embedded). Guidance on how the requirements of the PSC register will work in practice is not expected to be published until the autumn.</p> |
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**Provisional implementation date: April 2016**

| <b>Key change</b>                                       | <b>Description</b>  |
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| <b>PSC register</b>                                     | As noted above, from April 2016 companies will need to file information about their PSC's at Companies House.   |
| <b>Changes to the annual return process</b>             | The current requirement to file an annual return will be replaced with an obligation to confirm (at least once a year) that all required information has been supplied to Companies House. The new regime is designed to give companies greater flexibility as to when the annual confirmation is given and to make life easier - on the basis that companies shouldn't need to provide any new information to Companies House at the point the confirmation is made (if all required filings have been made during the year).  |
| <b>Holding certain statutory registers publicly</b>     | Going forward there will be the option for private companies to hold certain statutory registers (e.g. register of directors, register of secretaries and register of members) publicly at Companies House rather than internally.  |
| <b>Changes to the directors disqualification regime</b> | The Directors Disqualification Act 1986 will be amended to increase the matters a court must consider when determining whether a person should be disqualified and any period of disqualification (for example, a director's track record). The changes will also enable disqualification proceedings to be taken in the UK where there is misconduct or the director has been convicted overseas. The changes will also provide for directors to compensate those suffering identifiable loss as a result of their misconduct. |
| <b>Statement of capital</b>                             | The information included in a statement of capital will be changed - so companies are only required to show the aggregate amount unpaid on shares in the statement of capital (rather than stating the amount paid up and unpaid on each share).  |

## Corporate directors

There will be a prohibition on the use of corporate directors - subject to certain exemptions (which are yet to be finalised) to allow corporate directors where they may be of value and are low risk. Originally exemptions being considered were specific situations, such as group structures and charities. However, recent government announcements indicate they are now considering a 'principles' based exceptions regime, where a corporate director will be allowed if certain conditions are met (such as a UK company could be a corporate director if its directors are all individuals). Changes may be needed to board composition in order to be compliant once the relevant provisions are finalised.

Until very recently this ban on appointing corporate directors was due to come into force in October 2015 - but it has now been announced that this will be delayed until 2016 (the exact date has not yet been confirmed).

## Streamlined company registration

The SBEEA also imposes a duty on the Secretary of State to ensure that by the end of May 2017 a streamlined company registration system is in place - enabling a person to electronically deliver the information required to register a company at Companies House and to register for taxes with HMRC on a single occasion.

## Conclusion

The corporate aspects of the SBEEA will have a large impact on company administration once its provisions are implemented - whatever the size or status of the company concerned. Many of the changes will be welcomed by SMEs, as they should benefit from the improved efficiencies in company filing requirements. However, all companies need to be aware of the changes the SBEEA introduces, so they can start taking appropriate steps to ensure compliance - with particular consideration to the new obligation to maintain a PSC register. The SBEEA made it onto the statute book just before the General Election, but the government has left the fine tuning of some of the more difficult aspects (such as how to deal with corporate directors) until afterwards. We still await detailed guidance in a few areas before we know the full impact of the SBEEA.

*talk to us...*

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