

People with Significant Control

Updated June 2019



Introduced in April 2016, Part 21A Schedules 1A and 1B of the Companies Act 2006 require that private UK companies and Limited Liability Partnerships (LLPs) create and maintain a register of People with Significant Control (PSC).

The PSC information used to be included on the confirmation statement that is filed at Companies House. Companies must now update the PSC information using the appropriate PSC form.

From 26 June 2017, Scottish Partnerships (SPs) and Scottish Limited Partnerships (SLPs) also fall under the requirement to maintain and file PSC information.

Companies covered by the regulations

The PSC Regulations 2016 apply to UK incorporated companies limited by shares, companies limited by guarantee (including community interest companies) and *societas europaea* (SEs). Limited liability partnerships (LLPs) are also subject to the requirements and this is governed by The Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016. In addition, from 26 June 2017, Scottish Partnerships (SPs) and Scottish Limited Partnerships (SLPs) are included in the requirements.

The requirements do not apply to companies with voting shares admitted to trading on a regulated market in the UK or European Economic Area (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel.

The Guidance issued from the department of Business, Energy and Industrial Strategy (BEIS) currently states that Limited Partnerships and Charitable Incorporations are not required to maintain a PSC register. However, BEIS is proposing to extend the PSC requirements to all entities that are incorporated in the UK and have a beneficial owner. Also, companies that

are not listed on regulated markets such as the London Stock Exchange, but are quoted on prescribed markets from 24 July 2017, must maintain a PSC register.

These regulations state that companies are required to:

- Take reasonable steps to find out if there are people that have significant control or influence over the company
- Contact these people (or others who might know them) to confirm they meet one or more of the conditions and get the relevant information – it's worth noting that PSCs (or anyone who might know about a PSC), must respond to the requests for information, as they too are subject to the requirements
- Put the information on the company's own PSC register
- File the information at Companies House to be made available on the central public register
- Keep the information up to date

Identifying a PSC

In relation to a company, a PSC is an individual who meets one or more of the following conditions:

- i. Directly or indirectly owning more than 25% of the shares
- ii. Directly or indirectly holding more than 25% of the voting rights
- iii. Directly or indirectly holding the right to appoint or remove the majority of directors
- iv. Otherwise having the right to exercise, or actually exercising, significant influence or control
- v. Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

If any of the first three conditions are met, then you do not need to worry about (iv) or (v).

In relation to an LLP, a PSC is an individual who meets one or more of the following conditions:

- i. Directly or indirectly holding rights over more than 25% of the surplus assets on a winding up
- ii. Directly or indirectly holding more than 25% of the voting rights
- iii. Directly or indirectly holding the right to appoint or remove the majority of those involved in management
- iv. Otherwise having the right to exercise, or actually exercising, significant influence or control
- v. Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual.

Relevant Legal Entity (RLE)

A PSC is by definition an individual, and not a legal entity. But the company might be owned or controlled by a legal entity, not an individual. A legal entity must be put on the PSC register if it is both relevant and registrable.

A legal entity is relevant in relation to your company if it meets any one or more of the conditions (i) to (v) above and;

- Holds its own PSC register, or
- Has voting shares admitted to trading on a regulated market in the UK or EEA (other than the UK) or on specified markets in Switzerland, the USA, Japan and Israel

An RLE is registrable in relation to your company if it is the first relevant legal entity in the company's ownership chain.

Where an RLE has been identified, the following details must be obtained and entered into the PSC register;

- Name of the legal entity
- The address of its registered or principle office
- The legal form of the entity and the law by which it is governed
- Registration details
- Date the legal entity became a RLE
- Nature of control (the relevant conditions)

In all other respects, the assessment of whether a person or entity should be entered on the register as a PSC or RLE by meeting any of the above conditions, operates for an LLP in the same way as a company.

Information required for the PSC register

Where you have identified a PSC, you need to obtain, confirm and then enter the following details on the PSC register about the PSC:

- Name
- Date of birth
- Nationality
- Country, state or part of the UK where the PSC usually lives
- Usual residential address
- Services address (if different to the residential address)
- The date the individual became a PSC
- Which of the five conditions for being a PSC the individual meets
- Any restrictions on disclosing the PSC's information

Updating PSC information

In line with the implementation of the EU Fourth Money Laundering Directive on 26 June 2017, the Confirmation Statement is no longer used to update PSC information at Companies House.

Instead, the procedure is as follows:

- A company/LLP will have 14 days to update its own PSC register and will have a further 14 days to inform Companies House of the changes;
- The appropriate forms (PSC01 through to PSC09) will need to be used to notify Companies House of PSC changes for companies; and
- The appropriate forms (LL PSC01 through to LL PSC09) will need to be used to notify Companies House of PSC changes for LLPs

What is meant by ‘significant influence or control’ over a company?

An individual meets Condition 4 if they have the right or actually exercises significant influence or control over the company.

There is guidance issued from BEIS on the meaning of ‘significant influence or control’ and this guidance states:

- ‘Control’ means the direct power to direct the policies and activities of the company
- ‘Significant influence’ means that a person can ensure that the company adopts those policies or activities which are desired by the holder of the significant influence

‘Significant influence or control’ can go beyond the financial and operating policies of the company and does not have to be exercised by a person just for their own economic gain.

It also covers the direct or indirect right to exercise actual significant influence or control, whether the right is created through provision in a company’s articles, shareholders’ or investors agreement, share rights or otherwise.

Note that a person holding such a right must be entered in the PSC register irrespective of whether the right has or will be exercised.

Examples given in the statutory guidance of rights to, or actual exercise of, significant influence or control include:

- Having absolute decision rights or veto rights over decisions relating to the running of the business of the company
- Being involved in the day to day management of the company where they are not a member of the board (or even a shareholder)
- Whose recommendations are always or almost always followed by the shareholders which hold the majority of the voting rights in the company, when they are deciding how to vote

The guidance goes on to identify ‘safe harbours’ (roles and relationships which usually mean a person won’t be exercising significant influence or control). These include directors and employees acting within their role in the company, together with the usual third party, statutory, regulatory and advisory parties (suppliers, lenders regulators, liquidators, lawyers and accountants etc) as well as a person who makes recommendations to shareholders on a one-off issue that is then voted on.



Companies without PSCs

The PSC requirements apply whether the company has a PSC or not. If all reasonable steps have been taken and the company is confident that there are no individuals or legal entities which meet any of the conditions, a statement to this effect must be added into the register.

The appropriate PSC form should also be filed at Companies House.

Confirming information

The company must confirm information about a PSC before it is entered onto the PSC register. This applies if the company has reason to believe there is a PSC, but have not identified who they are. Or, they know who they are, but do not have their full details. Again, statements to this effect must be entered into the PSC register.

See page 49 of the guidance for the prescribed wording.

Protection regime

There may be circumstances where a PSC's required particulars should be suppressed from public disclosure to protect individuals at serious risk of harm. The grounds for an application for protection are where there is a serious risk that the PSC, or a person who lives with the PSC, will be subjected to violence or intimidation if their PSC information is publicly disclosed.

This risk of physical harm must also be due to the company's activities, or circumstances specific to an individual PSC and their link to the company.

PSC and RLE obligations

Both PSCs and RLEs are required to respond to any notices from the company requesting information but their obligations do not stop there. They also have a positive obligation to disclose details of any relevant interests and rights.

So any individual or legal entity who meets the criteria for being registered as a PSC or RLE in a company's PSC register is under the obligation to notify the company of this fact, to provide details of their interest and the associated private details that require entry into the register.

Details must be provided within one month of their interest becoming registrable. Registered PSCs or RLEs also have the ongoing obligation to notify the company when changes to their particulars or interest occur.

Sanctions for non-compliance

There are potential criminal sanctions for individuals, companies, directors, PSCs or RLEs in the form of fines or, potentially, imprisonment for failure to comply with PSC obligations.

In addition to this, the Company has the power to place restrictions to shares or interests held by any person or legal entity who, without a valid reason, fails to respond to its request for information.

For more information on this onerous default process, see the guidance from BEIS.



For more information about any of the issues mentioned in this publication, please get in touch.

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