

# Small Business, Enterprise and Employment Act 2015

## Quick Guide to the Register of People with Significant Control

This table provides an overview of the PSC regime. The regime applies to different types of entity. There are sections towards the end that deal with some specific aspects of how the regime applies to partnerships, but generally, unless otherwise stated, the word “company” is used throughout this document to apply to any entity that is subject to the regime.

Basics			
1	What's happening?	UK companies (and other entities) have to compile and keep a PSC register.  Some Scottish partnerships have to investigate their ownership and notify Companies House of any PSCs (they do not have to keep a PSC register).	Part 21A CA06 Scottish Regs
2	When?	For most companies, the regime started on 6 April 2016.  For companies with shares traded on AIM or NEX Exchange markets, unregistered companies and Scottish partnerships, the regime started on 26 June 2017, with some elements starting on 24 July 2017.	Regulation 4, 3rd Commencement Regs Regulation 2 and Schedule, 2017 Regs and Regulation 1, Scottish Regs
3	Why?	Initially, because, against a background of updated FATF recommendations in this area, David Cameron pledged at the G8 summit in 2013 to ensure transparency of beneficial ownership of UK companies in order to tackle the misuse of companies to facilitate serious criminal activity. Similar requirements were then adopted in the EU Fourth Money Laundering Directive which covers much of the same ground. The UK regime was tweaked in June 2017 to comply with the Directive.	
4	What's a PSC?	A person with significant control.	
5	What's that?	An individual who controls, broadly, more than 25% of the company.	Part 1, Schedule 1A CA06
6	Does this apply to all UK companies?	No. There is an exemption for companies with voting shares traded on a regulated market in an EEA state or on certain stock markets in Israel, Japan, Switzerland and the USA (including NASDAQ and NYSE). The Official List of the London Stock Exchange is a regulated market.  There used to be a separate exemption for “DTR5 issuers” which covered AIM and NEX Exchange companies but this was removed on 26 June 2017 to ensure the UK regime complies with the EU Directive.  It does not apply to entities that do not have legal personality (e.g. English general partnerships).	s790B CA06

PSC details and protection of them

7	What must a company to whom the regime applies do?	<p>Initially, take reasonable steps to find out if it has any PSCs and, if it does, identify them and keep a register of their details, and send the details to Companies House.</p> <p>Scottish partnerships do not need to keep a register but must send the details to Companies House (see Qs 30-34 for more detail on Scottish partnerships).</p>	<p>s79oD CAo6</p> <p>Regulation 10 Scottish Regs</p>
8	Which details?	Name, service address, country of usual residence, nationality, date of birth, usual residential address, date on which s/he gained control, nature of control and whether there are any restrictions on using or disclosing any of those details. These details must be kept up to date.	s79oK CAo6
9	Will the register be made public?	<p>Yes, the company's register must be available for inspection by any person without charge, and copies must be made available for a fee of £12.</p> <p>The information is also available at Companies House. Between 30 June 2016 and 26 June 2017 companies have had to include the information from their PSC register in their Confirmation Statement (as the Annual Return is now known). From 26 June 2017 companies must notify Companies House every time they make or change any entry in the PSC register and the Confirmation Statement simply confirms that the PSC information at Companies House is up to date. There are transitional arrangements for companies which filed a Confirmation Statement and recorded a change in their PSC register before 26 June 2017.</p> <p>See Qs 30-34 on Scottish Partnerships' obligations.</p>	<p>ss79oN-79oT CAo6</p> <p>s79oVA CAo6</p>
10	So absolutely anyone can look at it?	<p>Yes, but if they ask for it from the company they must make a request giving their name and address and the purpose for which they will use the information. If the company believes that the information is not being sought for a proper purpose it can apply to the court for an order that it should not comply with the request.</p> <p>There is caselaw on the equivalent provisions already in the CAo6 requiring companies to allow people to inspect their register of members.</p>	ss79oO and P CAo6
11	Is any information protected?	The usual residential address ("URA") of a PSC will not be available from Companies House (except to credit reference agencies) or from the company. The day element of a PSC's date of birth will not be available from Companies House but will be available from the company.	<p>s79oZF CAo6</p> <p>s1087A CAo6</p>
12	What if a PSC does not want his or her other details made public?	<p>A PSC can apply for an order prohibiting Companies House from disclosing his URA to credit reference agencies. S/he can also apply for an order prohibiting Companies House and the company from disclosing any of his/her details to any person (although Companies House will always be allowed to disclose details to certain public authorities including law enforcement agencies and credit and financial institutions). The tests to be satisfied differ slightly for each application but basically require a serious risk of violence to the PSC or someone who lives with them.</p> <p>For entities newly in scope (AIM companies, Scottish partnerships etc.), there is a grace period during which a PSC can dispose of "control" if s/he is unsuccessful in an application for protection of his/her details.</p>	<p>Parts 6 &amp; 7 PSC Regs</p> <p>Paragraph 5, Schedule to 2017 Regs</p>
13	This sounds familiar.	It is similar to the existing regime for the protection of directors, and in fact that regime has been amended to bring it into line with this one.	Part 9 PSC Regs

### Details of control conditions for companies (see below for partnerships)

14	Does “significant control” look only at shareholdings?	No, the control test is satisfied by anyone who meets one or more of five specified conditions. These are: <ol style="list-style-type: none"> <li>1) a direct or indirect holding of more than 25% of the shares in the company;</li> <li>2) the direct or indirect holding of more than 25% of the voting rights in the company;</li> <li>3) the right, directly or indirectly, to appoint or remove directors holding a majority of the board level voting rights;</li> <li>4) the right to exercise, or actual exercise of, significant influence or control over the company;</li> <li>5) the right to exercise, or actual exercise of, significant influence or control over the activities of a trust or firm, the trustees or partners of which satisfy one of the other conditions.</li> </ol>	Part 1, Schedule 1A CA06
15	What does an indirect shareholding look like?	Shares or rights are held indirectly if they are held via a majority stake (as defined) in a company or chain of companies.	Paragraph 18, Schedule 1A CA06
16	What about individuals who exercise control jointly?	Individuals who have a “joint arrangement” (including any agreement, understanding or practice) regarding their shares will each be treated as holding the combined shares.	Paragraph 12, Schedule 1A CA06
17	What does “significant influence or control” in the fourth condition mean?	There is statutory guidance on this, which includes examples. Someone with “absolute decision” rights or “absolute veto” rights relating to the running of the company’s business e.g. its business plan or borrowing decisions, would have SIC, but not if those veto rights are solely to protect a minority shareholding. The guidance gives a list of “excepted roles”, which includes professional advisers to the company, parties to contracts with the company and directors. These roles would not, on their own, constitute SIC.	Statutory Guidance on the meaning of “Significant Influence or Control” over companies in the context of the Register of People with Significant Control issued by BIS

### Details of what the company must do

18	What must a company do once it thinks it has identified a PSC?	Send the possible PSC a notice asking the addressee to say whether or not s/he is a registrable person, and to correct, complete or confirm his/her details if s/he is.	s790D CA06
19	Is the onus solely on the company to obtain this information?	No. If the company hasn’t served a notice on a PSC by the end of the month after s/he’s become a PSC, s/he has a duty to supply the relevant details to the company.	s790G CA06
20	Our company is widely held and has no PSCs. Does it have to keep a register?	Yes, and it should never be blank. Once the company is satisfied that it has taken reasonable steps to identify any PSCs, it should note in its register that it knows or has reasonable cause to believe that there is no PSC in relation to the company.	Regulation 10 PSC Regs
21	What do I put in my PSC register if I don’t know yet if my company has any PSCs?	There is “official wording” prescribed to cover most of the scenarios where the company might not have complete information, including where it knows there is a PSC but it can’t identify them, or where it has identified a PSC but the PSC hasn’t replied to a notice yet, or where the company hasn’t yet finished taking reasonable steps to find out if it has any PSCs.	Part 4 PSC Regs and Annex 2 BIS Guidance

22	Might people other than shareholders receive notices from the company relating to PSCs?	Yes. A company can give notice to anyone who it knows or has reasonable cause to believe knows the identity of a PSC, or knows someone who is likely to know the identity of a PSC. This can include intermediaries or advisers, including banks, lawyers, accountants and family members.	s790D(5) CA06
23	My company is a wholly-owned subsidiary within a group and Topco has a PSC. Is that person a PSC of my company?	Not necessarily. It depends whether there is a “non-registrable relevant legal entity” in the chain of ownership. This area is convoluted and the initial legislation contained an error which has been corrected by supplementary regulations. Basically, you look up the chain until you get to an entity which is either subject to the PSC regime in its own right, or is exempted (see Q6). That entity (a “registrable relevant legal entity” or RRLE) is then entered in your PSC register. If your immediate holding company is an overseas entity then you must continue to look up the chain of ownership until you get to a PSC or RRLE.	s790C and Part 2 Schedule 1A CA06
24	Are there any precedent forms?	Yes. The BIS Guidance contains sample forms of notices that the company may need to send out, as well as “official wording” to be entered on the register.	
<b>Enforcement</b>			
25	What if the company doesn't take reasonable steps to identify its PSCs?	Failure to comply with this legislation is a criminal offence on the part of the company and officers who are in default.	s790F CA06
26	What if a recipient of a request for information from the company doesn't respond to it?	Failure to answer a request for information, or to give false information, is also a criminal offence. In addition, the company can give a warning notice to any recipient who is a shareholder or otherwise holds voting rights in, or the ability to appoint or remove a director of, the company. The warning notice can be followed by a restrictions notice which suspends the recipient's rights over its shares.  There is recent caselaw on the equivalent provisions in Part 22 CA06 allowing public companies to impose restrictions on their shares.	s790I CA06 and Schedule 1B CA06  Part 5 PSC Regs sets out the content of these notices and there are example warning notices and restrictions notices in Annex 3 of the BIS Guidance.
27	What if a PSC doesn't get a request for confirmation of its details from the company?	As said above (Q 19) PSCs also have an obligation to notify the company of their details. Failure to do this is a criminal offence.	

Application to LLPs			
28	Does this regime apply to LLPs?	Yes, it has applied from the start to all LLPs, whether registered in England and Wales, Scotland or Northern Ireland.	Regulation 3 LLP Regs
29	How do the specified conditions apply to LLPs?	<p>The conditions for an individual to be a PSC of an LLP are:</p> <ol style="list-style-type: none"> <li>1) a direct or indirect holding of rights over more than 25% of the surplus assets on a winding up;</li> <li>2) the direct or indirect holding of more than 25% of the voting rights in the LLP;</li> <li>3) the direct or indirect holding of the right to appoint or remove the majority of those involved in the management of the LLP;</li> <li>4) the right to exercise, or actual exercise of, significant influence or control over the LLP;</li> <li>5) the right to exercise, or actual exercise of, significant influence or control over the activities of a trust or firm, the trustees or partners of which satisfy one of the other conditions.</li> </ol>	Paragraph 31M Schedule 1 LLP Regs
Application to Scottish partnerships			
30	Does this regime apply to Scottish partnerships other than LLPs?	Yes, some of them. It applies to Scottish limited partnerships, and Scottish general partnerships which are qualifying partnerships under the relevant accounts rules (this includes, among others, Scottish general partnerships all of whose members are limited companies).	Regulation 3(2) Scottish Regs
31	Why are these Scottish entities within the scope of the regime while the equivalent English entities are outside it?	Because the law has always said that Scottish partnerships have legal personality. The Fourth Money Laundering Directive requires member states to ensure that companies and other “legal entities” are caught by the regime.	s4(2) Partnership Act 1890
32	Is the regime the same for these Scottish partnerships as it is for English companies?	<p>Not entirely, because it takes account of the fact that:</p> <ol style="list-style-type: none"> <li>(a) partnerships do not generally have to keep statutory books. Scottish partnerships within scope are therefore not required to keep a PSC register themselves. They only have to provide information about their PSCs to Companies House. This must be done within 14 days of 24 July (or the date when it knows the details of an RRLE or the date when it receives confirmation of its details from a PSC). If, by 24 July 2017, it does not have full information about its PSCs it must file a holding statement with Companies House, along the lines of the statements mentioned in Q 21; and</li> <li>(b) Scottish general partnerships do not have records at Companies House because there has so far been no requirement for them to register these. So, in addition to working out who their PSCs are, Scottish qualifying partnerships must also register themselves at Companies House within 14 days of 24 July (or the date when it becomes a qualifying partnership).</li> </ol> <p>Otherwise, the regime is, for the most part, the same.</p>	<p>Regulation 19 Scottish Regs</p> <p>Regulation 5 Scottish Regs</p>

33	How do the control conditions work?	<p>With one important exception, the specified conditions are the same as they are for LLPs (Q 29). BEIS has issued guidance on the meaning of “significant influence or control” (fourth condition) over Scottish partnerships, similar to that already issued for companies and LLPs.</p> <p>The exception is that the original legislation dealing with companies, LLPs, SE’s etc says that if there is a limited partnership in the ownership structure, limited partners are not PSCs by virtue only of being a limited partner. This provision has <u>not</u> been carried across into the legislation for Scottish partnerships.</p>	Part 1, Schedule 1, Scottish Regs
34	Do Scottish partnerships now have to file a Confirmation Statement?	<p>Yes, but only in respect of their PSC information (in other words, it will not require all the other information that is covered in an English company’s Confirmation Statement). The first one will be due on the anniversary of 24 July 2017, or of the date of their registration if that is after 24 July 2017.</p>	Part 6, Scottish Regs

“**3rd Commencement Regs**” means the Small Business, Enterprise and Employment Act 2015 (Commencement No. 3) Regulations 2015 (2015/2029)

“**BIS Guidance**” means the guidance entitled “Register of people with Significant Control: Guidance for Companies, Societates Europaeae and Limited Liability Partnerships” issued by the Department for Business Innovation & Skills in January 2016

“**CAo6**” means Companies Act 2006

“**LLP Regs**” means the Limited Liability Partnerships (Register of People with Significant Control) Regulations 2016

“**PSC Regs**” means The Register of People with Significant Control Regulations 2016

“**Scottish Regs**” means The Scottish Partnership (Register of People with Significant Control) Regulations 2017

“**2017 Regs**” means the Information about People with Significant Control (Amendment) Regulations 2017

---

Mayer Brown is a global legal services provider advising many of the world’s largest companies, including a significant portion of the Fortune 100, FTSE 100, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world’s largest banks. Our legal services include banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global legal services provider comprising legal practices that are separate entities (the “Mayer Brown Practices”). The Mayer Brown Practices are: Mayer Brown LLP and Mayer Brown Europe-Brussels LLP, both limited liability partnerships established in Illinois USA; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales (authorized and regulated by the Solicitors Regulation Authority and registered in England and Wales number OC 303359); Mayer Brown, a SELAS established in France; Mayer Brown Mexico, S.C., a sociedad civil formed under the laws of the State of Durango, Mexico; Mayer Brown JSM, a Hong Kong partnership and its associated legal practices in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. Mayer Brown Consulting (Singapore) Pte. Ltd and its subsidiary, which are affiliated with Mayer Brown, provide customs and trade advisory and consultancy services, not legal services. “Mayer Brown” and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

“Mayer Brown” and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

© 2017 The Mayer Brown Practices. All rights reserved.