

Confirmed implementation dates PSC register and BIS response to consultation

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Confirmed implementation dates for register of People with Significant Control ('PSCs') provisions and BIS response to consultation on the PSC Register: Scope, nature and extent of control, fees, the protection regime and warning and restrictions notices

On 9 December 2015 it was confirmed that, pursuant to The Small Business, Enterprise and Employment Act 2015 (Commencement No.3) Regulations 2015, companies and other entities subject to PSC provisions will be required to keep a PSC register from 6 April 2016 and send this information to Companies House with a confirmation statement (replacing an annual return) or on incorporation, from 30 June 2016.

On 17 December 2015 the Department for Business Innovation & Skills ('BIS') published its response to some aspects of its consultation paper on draft Register of People with Significant Control Regulations 2015 (the 'PSC Regulations').

While the PSC Regulations are still in draft form, BIS has confirmed certain amendments it will make before they are laid before Parliament in January 2016, along with regulations bringing limited liability partnerships ('LLPs') into the PSC regime.

1. Companies not required to keep a PSC register

The Government has confirmed that along with UK registered companies required to comply with Chapter 5 of the Financial Conduct Authority's Disclosure and Transparency Rules sourcebook (the 'DTR5 issuers'), companies with the voting shares admitted to trading on a regulated market in an EEA state, as well as companies listed on certain markets in Japan, the USA, Switzerland and Israel will be exempt from having to maintain a PSC register on the basis that they are already subject to similar disclosure requirements to the DTR5 issuers and this information is publicly available. A definitive list of exempt entities will be set out in the PSC Regulations.

2. Legal entities subject to their own disclosure requirements – relevant legal entities

In certain circumstances companies which own or control other companies may be subject to their own disclosure requirements and may have to be entered on the PSC register of an underlying company instead of an individual. By analogy with companies which are not required to keep a PSC register, UK and non-UK legal entities that have voting shares admitted to trading on a regulated market in an EEA state and certain markets in Japan, the USA, Switzerland and Israel will qualify as being subject to their own disclosure requirements.

3. Recording the nature and extent of control

The Government will amend the PSC Regulations so that if a person already meets one of the first three specified conditions (please see [this article](#) for details on specified conditions), the company would not need to record in its PSC register if and how the person meets the fourth specified condition, namely exercising or having the right to exercise significant influence and control.

For share ownership and voting rights, the current three broad bands indicating whether a PSC owns (a) more than 25% up to and including 50%; (b) more than 50% and less than 75%; or (c) 75% or more, will be retained.

4. Other information to be noted on the register

While the Regulations will be redrafted to make them easier to understand, the Government will retain the requirement for companies to note the following circumstances in their register: -

- a company has established that it does not have PSCs;
- a company has reason to believe that there are PSCs but has not been able to identify them;
- a company has issued a formal request for information but it has not been complied with within the set timescale;
- a company has placed restrictions on the relevant interest of a person or an entity that has not complied with a formal request for information; and
- a company does not have information that can be put on the register and cannot make any other note as to the progress of its

investigation.

5. Fees chargeable by companies for copies of their register

The Government intends to implement a fixed fee of £12 per request for a copy of a company's PSC register or any part of it (irrespective of how many parts are required to be copied). Please note that this is separate from the central public register to be held by Companies House.

6. The protection regime

PSCs' residential addresses and, if applicable, their service addresses being their usual residential addresses, will be protected information, with only credit reference agencies which satisfy certain conditions and specified public authorities having access to it.

BIS has confirmed that it will implement a protection regime for individuals on the grounds of serious risk of violence due to the company's activity, or, due to the circumstances specific to an individual PSC and their link to the company. It intends to put in place an application process for protecting wider secured PSC information with the Registrar being able to seek advice on the nature or extent of the risk of violence or intimidation from any authority he deems fit and provide clear guidance on whether an application can be made. Companies House is also due to publish detailed guidelines on the topic.

Following the consultation and as part of the transitional arrangements, the Government has also decided to extend the period in which a PSC could divest himself of his interest following an advance application to have his PSC information suppressed from 28 days to 12 weeks. The deadline would run from the later of the Registrar's decision that the application has been unsuccessful or the final appeal decided against the individual. Provided a PSC divests himself of his interest within the prescribed timeframe, his information will not be placed on the public register.

7. Warnings and restrictions notices

The Government currently does not intend to amend its policy that a person's lack of capacity to respond is the only factor which a company must take into account when considering reasons for his non-compliance with a request for information and the warning notice and it will provide sample draft notices as part of its guidance.

8. Foreign limited partnerships holding shares or rights in a UK company

By analogy with an English limited partnership which holds shares or rights in a UK company but does not take part in the management of the limited partnership (and will therefore not meet the first three conditions for significant control just by virtue of being a limited partner), the Government will extend these provisions to foreign arrangements similar to English limited partnerships.

9. Corporations sole and others

Corporations sole (ie certain government officers), governments or government departments, international organisations and local authorities will be treated as if they were individuals under the PSC legislation in all respects, except that their confirmation will not be required before their details are entered on the register. In this respect they will be treated in the same way as legal entities details of which do not require to be confirmed before their registration on PSC register.

10. Societas Europaea ('SEs')

SEs registered in the UK will be required to keep a PSC register and the regulations modifying some of the legislation to ensure that the law is effective in its application to SEs will come into force at the same time as the PSC Regulations for companies.

11. LLPs

As anticipated, the PSC regime will now come into force in respect of LLPs at the same time as for companies and separate regulations will be adopted to that effect.

It is currently proposed that conditions for significant control of an LLP will be based on the following:

- rights over surplus on winding up;
- voting rights in an LLP, in terms of rights conferred on members in relation to matters to be decided by a vote of the members;
- rights to appointment or remove the majority of those involved in management of the LLP;
- other significant influence or control, to be explained in statutory guidance.

BIS has now also confirmed that we can expect a finalised guidance for companies, LLPs and PSCs (originally expected in October 2015) in January 2016. Please [click here](#) for the latest PSC legislation implementation timeline.

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