

# PSC Regime: Questions and Answers

June 2017

## Who is affected?

**UK incorporated/registered companies limited by shares, companies limited by guarantee, Societates Europaeae and Limited Liability Partnerships (other than certain publicly traded companies)**

**UK unregistered companies (from 26 June 2017)**

**Certain Scottish partnerships (from 26 June 2017)**

**Individuals who could be a PSC in any of the above**

The publicly traded companies which are exempted from the PSC regime, because other transparency regimes apply to them, are those with voting shares admitted to trading on a regulated market in the UK or other member of the European Economic Area (such as the UK's main market), or on specified markets in Switzerland, the USA, Japan and Israel.

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## Both companies/LLPs and individuals who may be PSCs are affected

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PSCs in any companies, LLPs or other entities within the scope of the regime are also directly affected, both through their details being potentially made public and criminal sanctions for failure to comply with the regime. Where a PSC knows he or she is a PSC and has not been contacted or included on the relevant PSC register, he or she has a duty to notify the relevant entity.

These Q&A's focus on companies and LLPs. Equivalent provisions apply to other entities within scope. Further detail can be found in the government [guidance materials](#).

## What do I do next if I am affected?

### 1. Put in place a register and identify any PSCs and RLEs

Companies and LLPs must have a PSC register and take "reasonable steps" to identify their PSCs (and any "Relevant Legal Entity", being a legal entity which would be a PSC if it were an individual and is capable of being entered on the register, see question "[What is a Relevant Legal Entity](#)" below). Even though you may still not be able to identify your PSCs after having taken such steps, it is a criminal offence not to take reasonable steps.

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## Companies/LLPs must take reasonable steps to identify PSCs and RLEs

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### 2. Steps to take to identify PSCs and RLEs

For simple ownership structures it may be clear who (if any) are PSCs, but for more complex structures further investigation and advice may be needed.

The first step would be to analyse your register of members, constitutional documents and any shareholders', members' or other such agreements and make informal enquiries of the relevant individuals. If you are still unable to establish who your PSCs are there is an escalation process of statutory notices that can be used to require information to be provided (further detail on notices, together with example notices, can be found in the non-statutory guidance, see the government [guidance materials](#)).

The status of investigations must be logged on the PSC register using prescribed statements (see further below). Note that details of individuals cannot be included on your register until they have been "confirmed".

### 3. Make sure information about individual PSCs has been "confirmed"

Information about individual PSCs is treated as "confirmed" when the information: (i) is supplied by them, or with their knowledge; (ii) they have subsequently confirmed that it is correct; or (iii) it has previously been confirmed and there is no reason to believe it has changed. Information about a particular PSC (or RLE) must also be complete before it can be entered on the register, though other PSCs (or RLEs) where information is complete can be entered. You have an obligation to check that the information is confirmed before entering it into the register.

### 4. Individual PSCs

If you are a PSC and you have not been contacted by the relevant company or LLP, and are not sure if you have been included on its PSC register, you should get in touch with that company or LLP to make sure they are aware of your interest.

#### What if I have not confirmed who my PSCs are?

You still have to set up your register, though you are able to note that you are in the process of taking reasonable steps to identify your PSCs. There are various prescribed statements which must be included in the PSC register depending upon your specific circumstances, including for example:

*"The company has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person or a registrable relevant legal entity in relation to the company."*

### What is a PSC?

A person with significant control (“PSC”) is a person that meets one or more of the following conditions for a single company or LLP:

- 1 • Directly or indirectly owns more than 25% of the shares in the company (or for LLPs, holds rights over more than 25% of the surplus assets on a winding up);
- 2 • Directly or indirectly holds more than 25% of the voting rights in the company or LLP;
- 3 • Directly or indirectly has the power to appoint or remove the majority of the board of directors of the company (or for LLPs, the majority of those in management);
- 4 • Otherwise has the right to exercise or actually exercises significant influence or control over the company; or
- 5 • Has the right to exercise or actually exercises significant influence or control over a trust or firm that is not a legal entity, which in turn satisfies any of the first four conditions over the company.

There is a lot of detail in the provisions as to how these conditions are to be applied to the various ways in which individuals might hold their interest in the relevant company or LLP. For example, where rights are held by a nominee on behalf of another person, it is that other person who is treated as holding the rights for the purposes of the PSC regime. We have included questions around some of the more common examples below.

### What is a “Relevant Legal Entity”?

PSCs are individuals (and not legal entities). Relevant Legal Entities (“RLE”s) are legal entities which are capable of being registered (i.e. entered onto a PSC register) because they meet the conditions for being a PSC and also meet one of the following conditions (as they are subject to other transparency regimes):

- 1 • It keeps its own PSC register (so is a UK incorporated company or LLP subject to the PSC regime); or
- 2 • It has voting shares admitted to trading on a regulated market in the UK or another member of the European Economic Area, or on specified markets in Switzerland, the USA, Japan and Israel.

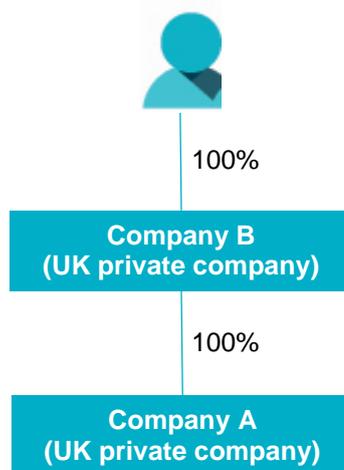
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Indirect interests further up an ownership chain needn't be included on a PSC register if there is a registrable RLE because they can be discovered by looking at that RLE's register. However, if there is also a PSC with a direct interest then both the RLE and PSC would be included on the register.

**Example of when just the RLE needs to be entered on the register**

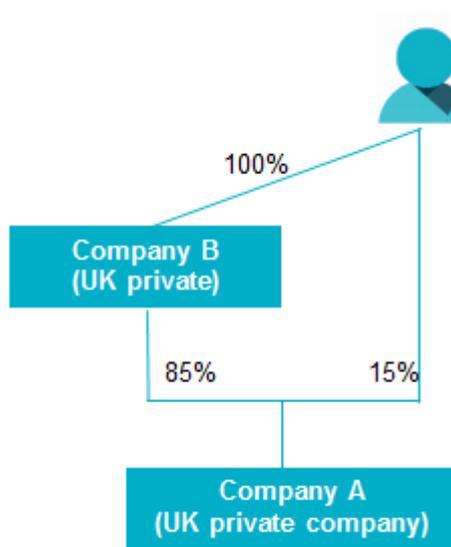


This individual is a PSC of Company A, as he has indirect control (see also the question below on meaning of “indirect”). However he is not registrable as he only holds his interest indirectly through an RLE (Company B). The individual would be entered on Company B's PSC register.

Company B is an RLE in respect of Company A, as it is subject to the PSC regime.

Only Company B will be entered on Company A's PSC register (the individual will not be entered on the register).

**Example of when RLE and a PSC need to be entered on the register**



This individual is a PSC of Company A, as he has indirect control through a legal entity (see also the question below on meaning of “indirect”); the direct holding of 15% alone would not make him a PSC, but his cumulative holding of rights (including his indirect holding) makes him a PSC. He is registrable in respect of Company A as he does not hold his entire interest in Company A indirectly through RLEs. The individual would also be entered on Company B's PSC register.

Company B is a registrable RLE in respect of Company A, as it is subject to the PSC regime.

Both the individual and Company B will be entered on Company A's PSC register.

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**“Indirect” ownership  
effectively equates to a  
“majority stake”**

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**What if rights are held by more than one person jointly?**

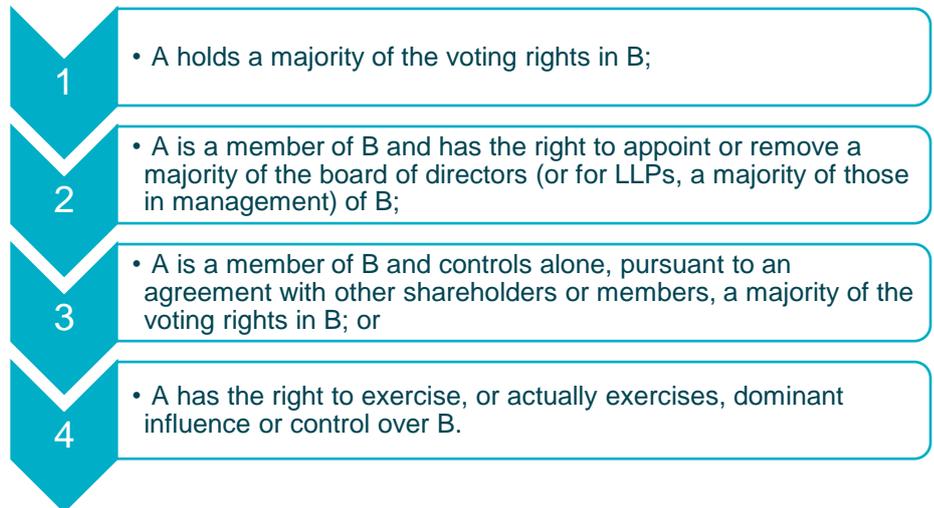
In broad terms, where rights, shares or other interests are held jointly, each joint holder is treated as holding all of those rights, shares or interests.

Therefore, if those rights, shares or other interests would in aggregate meet the tests for being a PSC, each joint holder would be separately treated as a PSC and entered on the register.

**What does “indirect” mean?**

Shares, rights or powers are held “indirectly” when a legal entity holds them and an individual has a “majority stake” in that entity.

For these purposes, A has a "majority stake" in B if:

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- 1 • A holds a majority of the voting rights in B;
  - 2 • A is a member of B and has the right to appoint or remove a majority of the board of directors (or for LLPs, a majority of those in management) of B;
  - 3 • A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B; or
  - 4 • A has the right to exercise, or actually exercises, dominant influence or control over B.

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### **What does significant influence or control mean?**

This is one of the more difficult areas, as it is very widely drawn. There is specific statutory guidance for companies and LLPs, which must be considered when determining if a person has significant influence or control. The guidance can be accessed [here](#).

The statutory guidance provides examples of when a person has the right to exercise (or actually exercises) significant influence or control and also examples of certain exceptions which would not, on their own, constitute significant influence or control. If someone is not a PSC under any of the first three conditions for being a PSC, careful analysis is therefore required as to whether they might fall into this condition. It should be noted that the significant influence and control does not need to be exercised to gain an economic benefit and there is no requirement that the rights actually be exercised.

These rights might be found in constitutional documents, or shareholders' or members' agreements, and can in certain circumstances include absolute veto rights.

### **How does the regime deal with interests held through trusts?**

In broad terms, if a company is owned entirely by a trust and that trust is a simple discretionary trust, it is most likely that the trustees (if individuals) will be PSCs and all have to be entered in the PSC register (they will likely hold the interest jointly and on that basis each trustee will be treated as holding the entire interest (see question "*what if rights are held by more than one person jointly*" above), but provided you are not also a trustee you would not as a beneficiary of such a trust be a PSC.

However, the requirements for trusts (and firms which are not legal entities, such as English Limited Partnerships) are complex and detailed consideration should be given to the specific facts of the situation, and advice sought as necessary. A beneficiary may be a PSC if he or she is able to exercise significant influence or control of the trust, for example where he or she:

- has an explicit right to appoint and remove trustees; or
- is actively involved and the trustees generally follow instructions he or she issues as to the activities of the trust

If the trustee is itself a legal entity which is not an RLE, it will be necessary to continue up the ownership chain until either a PSC or RLE has been identified, or you are confident none exist.

**What information needs to be included on the PSC register?**

The following information must be included on the PSC register for PSCs and RLEs:

Information required	PSCs	RLEs
Name	✓	✓
Date when it became a PSC / RLE (6 April 2016 for existing PSCs / RLEs when the regime initially came into force)	✓	✓
Official wording describing the conditions that the PSC / RLE meets to be categorised as a PSC / RLE (i.e. the nature of its control)	✓	✓
Address of registered or principal office		✓
Legal form and governing law		✓
Register in which it appears (if applicable)		✓
Date of Birth	✓	
Country, state or part of the UK where the PSC usually lives	✓	
Nationality	✓	
Service address	✓	
Usual residential address (if different from service address)	✓	
Any restrictions on disclosing the PSC's information that are in place	✓	

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## What information from the PSC register is made public?

### Requests for inspection

PSC registers must be kept available for inspection on request, provided it is for a proper purpose. If such a request is made, the company or LLP must within five business days either provide the requested information (up to £12 can be charged for a copy of the register) or, if you feel the request is not being made for a proper purpose, apply to court for a ruling and reply to the requestor informing them of that. It is a criminal offence to refuse a request without applying to court. All information on the register other than PSCs' usual residential addresses must be made available.

### Updating the public register

In addition, each time a company or LLP makes or updates an entry in its PSC register it has to inform Companies House within 14 days, together with the relevant information, using the prescribed PSC forms. That information will be available on the central public register, maintained by the Registrar of Companies, and be freely searchable (other than PSCs' usual residential addresses and the day of their date of birth).

### On or off-line?

Companies can choose to keep their PSC register online with the Registrar of Companies at Companies House, which means that it is freely publicly available (other than PSCs' usual residential addresses).

### Privacy

There is also a protection regime for public information. In exceptional circumstances, where there is a serious risk of violence or intimidation, all information about a PSC can be suppressed. There is also an extension of the current protection regime which applies to directors and members of LLPs in respect of the sharing of a PSC's usual residential address with credit rating agencies.



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