

## New requirements under the PSC regime What you need to know



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The UK PSC regime has changed in order to comply with the Fourth Money Laundering Directive. The PSC regime now includes entities previously outside the scope of the regime including Scottish limited partnerships, certain Scottish general partnerships and entities admitted to trading on UK prescribed markets such as the AIM market of the London Stock Exchange. Our corporate team have highlighted the key changes to the PSC regime and the actions entities should take to comply with the PSC regime.

### Background

The persons with significant control (PSC) regime has changed to meet the requirements of the Fourth Money Laundering Directive (2015/849/EU) (Directive). The UK, like all member states, had until 26 June 2017 to make the necessary changes to its domestic legislation to comply with the requirements of the Directive.

Whilst the changes are largely as anticipated, the regulations and associated guidance were only published shortly before the implementation date, and so entities will now need to quickly get up to speed to ensure that they are in a position to meet the new requirements.

Our previous briefing note on the anticipated changes to the UK PSC regime can be found [here](#).

### Key changes to the PSC regime

There are broadly two key changes to the PSC regime:

- more entities now fall within the scope of the PSC regime; and
- any relevant change to PSC information will need to be updated on the entity's PSC register and notified to Companies House shortly after the change occurs.

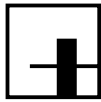
### Which new entities now fall within the scope of the PSC regime?

Since 6 April 2016 all non-exempted UK incorporated companies, Limited Liability Partnerships (LLPs) and Societas Europaeas (SEs) have fallen within the scope of the UK PSC regime.

In order to comply with the Directive, the types of entities that fall within scope of the PSC regime had to be expanded.

The UK PSC regime now also includes:

- all Scottish limited partnerships;
- a Scottish general partnership during any period in which it is a 'qualifying partnership' under regulation 3 of the Partnership Accounts (Regulations) 2008 which is broadly when each of its partners are corporate bodies. If a Scottish general partnership has a mixture of individual and corporate partners it will not be a qualifying Scottish general partnership;
- UK registered companies admitted to trading on a prescribed market such as the AIM market of the London Stock Exchange and the NEX Exchange Growth Market; and



- unregistered companies (as defined in regulation 2 of the Unregistered Companies Regulations 2009).

English limited partnerships and English general partnerships remain outside the scope of the UK PSC regime.

### What are the new PSC requirements for Scottish limited partnerships and qualifying Scottish general partnerships?

The requirements for Scottish limited partnerships and qualifying Scottish general partnerships (together defined in the new Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (the Scottish Regulations) and in this briefing note as “eligible Scottish partnerships”) are broadly the same and helpfully closely follow the existing PSC requirements for companies and LLPs.

One significant difference is that, unlike companies and LLPs, there is no requirement for an eligible Scottish partnership to maintain its own PSC register. Instead, an eligible Scottish partnership must file its PSC information at Companies House to be placed on the central public register.

The new Scottish Regulations require eligible Scottish partnerships to provide details of:

- those individuals who have significant control over the relevant eligible Scottish partnership (PSCs); and
- those legal entities that are “registrable relevant legal entities” in relation to the eligible Scottish partnership (RRLEs).

### Who is a PSC in relation to an eligible Scottish partnership?

An individual will be a PSC in relation to an eligible Scottish partnership if at least one of the following five conditions is met:

1. The individual holds, directly or indirectly, the right to more than 25% of any surplus assets on a winding up.
2. The individual holds, directly or indirectly, more than 25% of the voting rights.
3. The individual holds the right, directly or indirectly, to appoint or remove the majority of the persons who are entitled to take part in the management of the eligible Scottish partnership.
4. If none of the previous three conditions have been met, the individual has the right to exercise, or actually exercises, “significant influence or control”

over an eligible Scottish partnership. We consider what “significant influence or control” means in relation to an eligible Scottish partnership below.

5. The individual has the right to exercise, or actually exercises “significant influence or control” in relation to a trust or partnership which is not a legal entity, and the trustees of the trust or partners of the partnership satisfy any of the previous four conditions.

For example, limited partners of a Scottish limited partnership are usually entitled to participate in the surplus assets of the partnership in the event of a winding up. If we assume for the purposes of this example that a limited partner is an individual and is entitled to more than 25% of the surplus assets of the Scottish limited partnership then he or she will meet the first PSC condition and therefore have to be included in the PSC register of the Scottish limited partnership maintained at Companies House.

### What does “significant influence or control” mean?

BEIS has published guidance (available [here](#)) regarding the meaning of “significant influence” or “control” (which are two separate alternatives) in relation to eligible Scottish partnerships which is relevant for the fourth and fifth PSC conditions set out above.

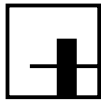
Briefly, the guidance provides that “significant influence” is where a person can ensure the eligible Scottish partnership generally adopts the activities which they desire whilst “control” is where a person is able to direct the activities of an eligible Scottish partnership.

The person exercising such influence or control does not need to gain any economic benefit in order to qualify as having the requisite influence or control. It is also not necessary to demonstrate that the person has actually exercised, or intends to exercise, significant influence or control over the eligible Scottish partnership – simply having the right to do so is sufficient.

There is no exhaustive list of when someone will be deemed to have “significant influence or control” over an eligible Scottish partnership. In each case, the individual circumstances will have to be considered. The partnership agreement (where there is one) will also be useful to help determine whether such influence or control exists.

The guidance provides a number of examples of when a person might be deemed to have a right to exercise “significant influence or control” over an eligible Scottish partnership including when that person:

- has an absolute right (i.e. without reference or agreement with anyone else) to make decisions



relating to the running of the business of the partnership including, for example, to amend the partnership agreement; or

- holds absolute veto rights over decisions relating to the running of the business of the partnership including, for example, to change the nature of the business of the eligible Scottish partnership.

If a person holds absolute veto rights in relation to certain fundamental matters in relation to a partnership but these are for the purposes of protecting a minority interest of that person in the partnership then these rights will not typically constitute “significant influence or control” for the purposes of the PSC conditions. This means that if, for example, a person has a right to veto the admission of new partners to protect their minority interest (as otherwise their rights or profit share will be diluted) then this will not constitute “significant influence or control”.

### What is a RRLE in relation to an eligible Scottish partnership?

A legal entity will be a RRLE in relation to an eligible Scottish partnership if it is both “relevant” and “registerable”.

A legal entity is “relevant” if:

1. it would have been a PSC and met one or more of the five conditions set out above if it had been an individual; and
2. it is either:
  - an eligible Scottish partnership;
  - it is required to hold its own PSC register (i.e. all non-exempt UK companies, LLPs, SE’s and unregistered companies); or
  - it is exempt from holding its own PSC register as it is subject to its own transparency requirements (for example, a company with voting shares admitted to trading on a regulated market in the UK or EEA or on specified markets in Switzerland, the USA, Japan and Israel).

A “relevant” legal entity is “registerable” in relation to the eligible Scottish partnership if it is the first “relevant” legal entity in the eligible Scottish partnership’s chain of ownership.

For example, Scottish limited partnerships are frequently used for UK fund structures and we would ordinarily expect that the general partner of such a Scottish limited partnership would meet at least one of the five PSC conditions. If we assume that the general partner is a non-exempt UK company, the Scottish limited partnership only

needs to provide details of the general partner (together with any other PSCs or RRLEs) to Companies House and does not need to provide details of the PSCs or RRLEs of the general partner. This is useful in a group structure as an eligible Scottish partnership will not need to look beyond the first RRLE for any indirect interests held by any other person or entity further up its chain of ownership even if they are a “relevant” legal entity in relation to the eligible Scottish partnership as it will not be “registrable”.

### What should eligible Scottish partnerships do now?

All eligible Scottish partnerships must take reasonable steps to identify any PSCs and RRLEs and this process should now be underway. Annex 5 of the general BEIS guidance (available [here](#)) sets out useful guidance of the types of things you should consider for eligible Scottish partnerships in relation to each of the five PSC conditions.

It is important to note that the central register maintained by Companies House for eligible Scottish partnerships must always contain current information and can never be blank. This means that if, for example, you have not yet ascertained the PSCs and/or RRLEs for your eligible Scottish partnership you should notify Companies House of this status using the following prescribed wording:

The eligible Scottish partnership has not yet completed taking reasonable steps to find out if there is any person who is a registrable person or a registrable relevant legal entity in relation to it.

Alternative official statements can be found in Annex 5 of the BEIS guidance and include, for example, if the eligible Scottish partnership has no PSCs or RRLEs or if there are still unconfirmed particulars.

There is a short transitional period for eligible Scottish partnerships to comply with the new PSC requirements. Eligible Scottish partnerships have 14 days from 24 July 2017 to file the necessary PSC information at Companies House.

This does not mean that by 7 August 2017 all prescribed particulars for the PSCs and RRLEs of an eligible Scottish partnership need to be submitted (although this is of course possible if you are in a position to do so) but instead that you must notify Companies House of the status of your investigations (using the official statements set out in the BEIS guidance noted above) which will be added to the central register. You must then update Companies House as and when the position changes and the statement is no longer true.

Any new Scottish limited partnerships incorporated after 24 July 2017 will need to provide PSC details at the time



of incorporation on updated Forms LP5(s) and LP7(s) (for Scottish private fund limited partnerships).

All eligible Scottish partnerships will also need to confirm on an annual basis that the PSC information held at Companies House is correct.

### **A new requirement for Scottish general partnerships to register at Companies House**

Previously, there was no requirement for general partnerships to register or file information at Companies House.

This has now changed and qualifying Scottish general partnerships will need to submit a Form SQP1 to Companies House before 7 August 2017 (for existing qualifying Scottish general partnerships) or within 14 days of a Scottish general partnership becoming a qualifying Scottish general partnership (whether by formation or a change in its partners).

Companies House will then issue the qualifying Scottish general partnership with a registration number which can be used to file the necessary PSC information.

There will be ongoing filing requirements in relation to a qualifying Scottish general partnership including notifying Companies House within 14 days of any change to the registered details or if the Scottish general partnership is no longer a qualifying partnership.

This means that for the first time Scottish general partnerships will need to notify Companies House when, for example, a new partner joins the firm and Scottish general partnerships should ensure that they have their own internal administrative systems in place to ensure that these new filing requirements can be met.

### **What are the new PSC requirements for companies admitted to trading on a prescribed market such as AIM?**

When the UK PSC regime was introduced on 6 April 2016, there was an exemption for entities which are already subject to DTR5 of the Financial Conduct Authority's Disclosure Guidance and Transparency Rules which includes UK companies listed on the main market of the London Stock Exchange together with those admitted to trading on a prescribed market such as AIM and the NEX Exchange Growth Market.

However, the Directive only expressly exempts companies with shares admitted to trading on a regulated market in an EEA state or on certain specified markets in Japan, Switzerland, Israel and the USA (a full list of which is contained in Schedule 1 of the Register of People with Significant Control Regulations 2016).

It has now been confirmed that, for the first time, UK registered companies admitted to trading on a prescribed market like AIM or the NEX Exchange Growth Market now fall within the scope of the UK PSC regime. We have produced a separate briefing note setting out the requirements for such entities which is available [here](#).

### **What are the new requirements to update changes to PSC information?**

Until the new regulations came into force, entities subject to the UK PSC regime only had to update their PSC information maintained at Companies House on an annual basis as part of their confirmation statement.

The Directive requires the PSC information held at Companies House to be "current" and it was rightly identified that simply an annual confirmation would not meet that requirement.

Instead, the regulations provide that:

- eligible Scottish partnerships must notify Companies House of any relevant change to the PSC information within 14 days of that change occurring; and
- all other entities subject to the UK PSC regime must update their own PSC registers within 14 days of the change occurring (remember that even if you do not yet know all of the prescribed particulars in relation to the PSC or RRLE the status of your investigations using the official wording should be included) and must notify Companies House of the same change within 14 days of the entity updating its own register.

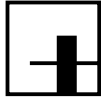
The confirmation statement will now no longer be the way to update PSC information at Companies House.

There are transitional arrangements in place and entities that are only now falling within scope of the UK PSC regime (i.e. AIM companies, unregistered companies and eligible Scottish partnerships) will not need to comply with the new reporting obligations until 24 July 2017.

For entities already subject to the UK PSC regime (i.e. non-exempt UK companies, LLPs and SEs), if there have been any changes to the PSC information since the time of the last confirmation statement of that entity the relevant filing updating that PSC information should strictly be made before 10 July.

### **Companies or LLPs with eligible Scottish partnerships in their group structure**

As Scottish limited partnerships and Scottish general partnerships were not previously required to provide PSC information to Companies House they could not be RRLEs for a company or LLP.



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This position has of course now changed. From 26 June 2017, an eligible Scottish partnership can be a RRLE if it meets the necessary conditions and should be included in the PSC register of a relevant company and LLP (and update Companies House accordingly). The date the eligible Scottish partnership became a RRLE (for the purposes of the PSC register) is 26 June 2017.

This means that all companies and LLPs should review their group structure and update their own PSC register and the central register maintained at Companies House to include eligible Scottish partnerships if appropriate.

### Next steps

Now that the changes to the PSC regime described above are either in force, or imminent, it is important to consider the effect of these changes and whether you or any entity you are involved with need to take any steps to comply with the new regulations.

Failure to comply is a criminal offence which could result in both a fine and imprisonment so you should make sure that you are in a position to meet the new requirements.

This briefing note is a general overview of the law. It is not exhaustive and does not constitute legal advice. Please get in touch with your usual contact at Shepherd and Wedderburn LLP should you require further details about any of the new changes to the PSC regime or your own specific circumstances.

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