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SBEEA Guide

Part 1: Provisions in force from 6 April 2016

(Updated 26.06.2017)

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FromCounsel SBEEA Guide: Part 1

On 6 April 2016, the following (introduced by SBEEA 2015 and related implementing legislation) came into force:

- the PSC Register regime, under which companies, LLPs and SEs are required to hold a register of persons with significant control – marking a major move towards transparency in the ownership of companies and LLPs; the obligations to create and maintain a PSC Register are wide-reaching, complicated and onerous;
- procedures for rectification of the Companies House register in relation to: (i) the unauthorised use by a company or LLP of a registered office address; and (ii) where a person named as a director has not consented to that appointment; and
- changes to the reporting obligations on insolvency office-holders in relation to directors' conduct.

Our FromCounsel Guide explains the key aspects of these provisions and provides practical considerations for companies and LLPs and their advisers.

Our FromCounsel SBEEA Guide: Part 2 explains the changes and regimes introduced by SBEEA 2015 on 30 June 2016.

Both FromCounsel SBEEA Guides have been updated to reflect changes introduced on 26 June 2017 by the Information about People with Significant Control (Amendment) Regulations 2017.

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<p>This Guide does not contain legal advice and is not a complete statement of the law. Readers should take specific legal advice before taking any action or entering into any transaction.</p>

Duty to keep a PSC Register

On 6 April 2016, SBEEA 2015 inserted a new [Part 21A](#) into CA 2006, pursuant to which companies, LLPs and Societates Europaeae (**SEs**) are required to hold a register of persons with significant control (**PSC Register**). As of 30 June 2016, companies, LLPs and SEs need to provide Companies House with PSC information upon incorporation and in their confirmation statement (which replaced the annual return). On 26 June 2017, certain previously exempted companies and other previously out-of-scope entities were brought within the PSC regime (including certain DTR5 issuers and unregistered companies), and changes were made to how and when PSC information is provided to Companies House.

The [Register of People with Significant Control Regulations 2016](#) (**PSC Register Regulations 2016**) supplement [Part 21A](#) by providing additional detail to the requirements of the regime, and the companies to which it applies. [Part 21A](#) is applied to LLPs by the [Limited Liability Partnerships \(Register of People with Significant Control\) Regulations 2016](#) (**LLP (PSC Register) Regulations 2016**) and to SEs by the [European Public Limited-Liability Company \(Register of People with Significant Control\) Regulations 2016](#).

On 26 June 2017, the following regulations came into force:

- the [Information about People with Significant Control \(Amendment\) Regulations 2017](#) (**PSC Amendment Regulations 2017**) – these transpose the requirements of Article 30 of the [Fourth Anti-Money Laundering Directive \(\(EU\) 2015/849\)](#) (**4AMLD**) to obtain and hold adequate, accurate and current information on beneficial ownership which applies to all member states; and
- the [Scottish Partnerships \(Register of People with Significant Control\) Regulations 2017](#) (**Scottish Partnerships (PSC) Regulations 2017**) – these bring certain Scottish partnerships within the PSC regime.

Key Dates for UK Companies, SEs and LLPs (unless exempt)	
From 6 April 2016	Required to create and maintain a PSC Register
From 30 June 2016	Required to file the information from the PSC Register with Companies House as part of confirmation statement process (and on incorporation)
From 26 June 2017	Entries into the PSC Register must be made within 14 days; Companies House filings to be made 14 days thereafter Companies with voting shares listed on markets <i>other than</i> regulated markets in EEA; unregistered companies; and eligible Scottish partnerships (together, newly in-scope entities) brought within PSC regime
From 24 July 2017	For newly in-scope entities existing on 26 June 2017, obligation to establish and maintain a PSC Register and the filing of information with Companies House applies (obligation to gather PSC information applies from 26 June 2017)

The legislative framework and related guidance notes are all referenced at the end of this feature. Note that analysis of the provisions of the Scottish Partnerships (PSC) Regulations 2017 is beyond the scope of this Guide.

The PSC Register: What is it and who goes on it?

What is the PSC Register?

A PSC Register is a register of people with 'significant control' over a company (including, from 26 June 2017, unregistered companies), SE, or LLP, maintained by that entity itself.

The introduction of the PSC Register is designed to enhance transparency of ownership, increase trust and tackle misuse of UK companies.

PSC Register information must be provided on incorporation (in a statement of initial significant control). Prior to 26 June 2017, it was also required to be provided in the yearly confirmation statement. From that date, companies and LLPs subject to Part 21A CA 2006 must file information entered in their PSC Register with the registrar of companies within 14 days of entry onto the register (see further, page 14), and companies and LLPs must confirm that they have complied with their notification obligations in the annual confirmation statement. For newly in-scope entities, the obligation to maintain a PSC Register and file information with the registrar applies from 24 July 2017. Note that eligible Scottish partnerships are required to file information with the registrar rather than maintain their own PSC Register.

Chapter 4 Part 21A CA 2006 provides an alternative scheme whereby private limited companies and LLPs can, from 30 June 2016, elect to maintain this information on the central register maintained by the registrar. For further information, see FC SBEEA Guide: Part 2.

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Who needs to keep a PSC Register?

UK companies

All UK companies (including unlimited companies, companies limited by guarantee, dormant companies and, from 26 June 2017, unregistered companies) except those which:

- have voting shares admitted to trading on a regulated market which is situated in an EEA state (**EEA regulated market companies**); or
- have voting shares admitted to trading on certain markets in Switzerland, the USA, Japan and Israel, as listed in Schedule 1 to the [PSC Register Regulations 2016](#).

List of Markets (Schedule 1)		
Israel	USA	
Tel Aviv Stock Exchange	BATS Exchange, Inc.	ISE Gemini LLC
	BATS Y-Exchange, Inc.	Miami International Securities Exchange LLC
Japan	BOX Options Exchange LLC	NASDAQ QMX BX, Inc.
Fukuoka Stock Exchange	C2 Options Exchange, Incorporated	NASDAQ OMX PHLX LLC
Nagoya Stock Exchange		The NASDAQ Stock Market LLC
Osaka Securities Exchange	Chicago Board Options Exchange, Incorporated	National Stock Exchange, Inc.
Sapporo Securities Exchange		New York Stock Exchange LLC
Tokyo Stock Exchange	Chicago Stock Exchange, Inc.	NYSE Arca, Inc.
	EDGA Exchange, Inc.	NYSE MKT LLC
Switzerland	EDGX Exchange, Inc.	
BX Berne Exchange	International Securities Exchange LLC	
SIX Swiss Exchange		

Prior to 26 June 2017, DTR5 issuers (ie those companies subject to disclosure requirements under Chapter 5 of the DTRs, which includes fully listed and UK incorporated AIM companies) were exempted from compliance with the PSC regime. The [PSC \(Amendment\) Regulations 2017](#) removed this exemption, instead exempting EEA regulated market companies. Regulated markets are defined in s 1173 CA 2006 as having the meaning given in the Markets in Financial Instruments Directive (2004/39/EU) (**MiFID**). Note that from 3 January 2018, under [the Financial Services and Markets Act 2000 \(Markets in Financial Instruments\) Regulations 2017](#), this will be replaced by a reference to the revised Markets in Financial Instruments Directive 2014/65/EU (**MiFID II**).

The effect of the change to the exemption ([s 790B\(1\)\(a\) CA 2006](#)) from 26 June 2017 is that companies with shares admitted to trading on prescribed markets are *not* exempted from the PSC regime and are, from 26 June 2017, required to comply with [Part 21A CA 2006](#) (see pages 9 and 10, and the FC SBEEA Guide: Part 2 on transitional arrangements). Prescribed markets, as defined in the FCA Glossary, are markets established under the rules of a UK recognised investment exchange. Both AIM and the NEX Exchange Growth Market are *prescribed markets* – as such, companies with voting shares admitted to trading on these markets are, from 26 June 2017, within the scope of the PSC regime.



Note that companies listed on the Main Market of the LSE are still exempt from the PSC regime as at 26 June 2017.

S 790B(1)(b) provides that the Secretary of State (SoS) can exempt other companies from the PSC regime by regulation. In deciding whether to do so, the SoS is, under s 790B(2), to have regard to the extent to which such companies are bound by disclosure and transparency requirements which are contained in international standards and are equivalent to the standards applicable to EEA regulated market companies. As at 26 June 2017, the companies currently exempted by the SoS by regulation are the Schedule 1 companies as listed above.

[Part 4 PSC \(Amendment\) Regulations 2017](#) extends the PSC regime to unregistered companies from 26 June 2017 and makes the necessary amendments to the [Unregistered Companies Regulations 2009](#) in order to apply Part 21A to unregistered companies. The FC SBEEA Guide: Part 2 explains the transitional arrangements in place until 24 July 2017.

References in this Guide and the FC SBEEA Guide: Part 2 to companies include unregistered companies (save where the context requires otherwise).

Exempt companies will still need to consider the requirements, as they may well be registrable entities in relation to other companies within their group.

UK LLPs

The PSC regime is applied to LLPs in an equivalent manner to companies, by virtue of the [LLP \(PSC Register\) Regulations 2016](#). All UK LLPs must keep a PSC Register.

Societates Europaeae

The PSC Register regime applies to SEs (also known as European public limited-liability companies) to the same extent, as it applies to companies, albeit with modifications. SEs are referred to in this Guide under the umbrella term of 'companies'.

Scottish limited partnerships and certain Scottish general partnerships

From 26 June 2017, the [Scottish Partnerships \(PSC\) Regulations 2017](#) extend the PSC regime to cover Scottish limited partnerships and certain Scottish general partnerships ('eligible Scottish partnerships'). However, eligible Scottish partnerships are not required to maintain their own PSC Register – instead the information that would ordinarily go on an entity's own register must be filed with the registrar. Analysis of the provisions of these regulations is beyond the scope of this Guide.

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Whose details must be recorded on a PSC Register?

Both individuals who have significant control and 'relevant legal entities' *must* be included in a PSC Register if they are 'registrable'.

In order to ascertain whether an entity should be entered in a PSC Register, there is, effectively, a two-stage process:

- (a) Is the entity either an individual with 'significant control' (a **PSC**) or a 'relevant legal entity' (an **RLE**)?

and if so,

- (b) Is that PSC or RLE 'registrable'?

The criteria for having 'significant control' differs for companies, LLPs and SEs. Whether a PSC or RLE is 'registrable' will depend on the way in which their interest is held.

A third category of registrable entity, 'other registrable persons', will rarely be encountered. This is addressed on pages 10 and 11.

[Guidance for PSCs](#) themselves has been published by BEIS.

What constitutes 'significant control'?

Companies

An individual has 'significant control' over a company if he meets one or more of the following five 'specified conditions' ([s 790C\(2\) and \(3\) CA 2006](#)):

- (a) he holds, directly or indirectly, more than 25% of the shares;
- (b) he holds, directly or indirectly, more than 25% of the voting rights;
- (c) he holds the right, directly or indirectly, to appoint or remove a majority of the board of directors;
- (d) he has the right to exercise, or actually exercises, 'significant influence or control' over the company; and/or
- (e) he has the right to exercise, or actually exercises, 'significant influence or control' over the activities of a trust or firm that is not (under the law by which it is governed) a legal person, the trustees or members of which meet any of the other specified conditions in paragraphs (a) to (d) above, or would do so if they were individuals.

Chapter 7 of the [PSC Register Guidance for Registered and Unregistered Companies, SEs, LLPs, and Eligible Scottish Partnerships](#) issued by BEIS (**PSC Register Guidance**) sets out detailed guidance on each of the conditions above.

A right 'to appoint or remove a majority of the board of directors' means a right to appoint or remove directors holding a majority of the voting rights at meetings of the board (or if the entity has no board, the equivalent management body) on all, or substantially all, matters.

References to the voting rights in a legal entity are to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all, or substantially all, matters.

Paragraphs 13 to 23 Schedule 1A [CA 2006](#) prescribe further rules on:

- the meaning of 'voting rights' in relation to a legal entity that does not hold general meetings at which matters are decided by the exercise of voting rights;
- how to calculate shareholdings; and
- the treatment of:
 - shares held by nominees;
 - rights, the exercise of which is controlled by another person;
 - rights exercisable only in certain circumstances;
 - joint interests;
 - joint arrangements; and
 - rights attached to shares by way of security.

This Guide uses these terms as so defined.

LLPs

An individual has 'significant control' over an LLP if he meets one or more of the following five 'specified conditions' ([regulation 3 and Schedule 1 LLP \(PSC Register\) Regulations 2016](#)):

- (a) he holds, directly or indirectly, rights over more than 25% of the surplus assets on a winding up;
- (b) he holds, directly or indirectly, more than 25% of the voting rights;
- (c) he holds, directly or indirectly, the right to appoint or remove the majority of those involved in management (for this purpose, this includes the right to appoint or remove those who hold a majority of the voting rights at meetings of the management of the LLP);
- (d) he has the right to exercise, or actually exercises, 'significant influence or control'; and/or
- (e) he holds the right to exercise, or actually exercises, 'significant influence or control' over the activities of a trust or firm that is not (under the law by which it is governed) a legal person, the trustees or members of which meet any of the other specified conditions in paragraphs (a) to (d) above, or would do so if they were individuals.

When read in conjunction with Annex 4, Chapter 7 of the [PSC Register Guidance](#) provides detailed guidance on each of these conditions.

The rules relating to the interpretation of these conditions in the case of companies also apply to LLPs, with necessary adaptations.

What are Relevant Legal Entities (RLEs)?

In some instances, legal entities will also need to be recorded on the PSC Register. Legal entities can only be recorded if they are 'relevant'.

Under [s 790C CA 2006](#), a legal entity (any body corporate or firm that is a legal person under the law by which it is governed) is a 'relevant legal entity' if:

- (a) it would satisfy one or more of the five specified PSC conditions if it were an individual; and
- (b) it is 'subject to its own disclosure requirements'.

As of 26 June 2017, an RLE is 'subject to its own disclosure requirements' if it is:

- a company to which [Part 21A CA 2006 applies](#);
- an 'eligible Scottish partnership' (Scottish limited partnerships and general Scottish partnerships which are qualifying partnerships as further detailed in [the Scottish Partnerships \(PSC\) Regulations 2017](#));
- an EEA regulated market company (a company with voting shares admitted to trading on a regulated market in an EEA state); or
- a company with voting shares admitted to trading on a market listed in Schedule 1 [PSC Register Regulations 2016](#) (as extracted on page 6).

The inclusion of DTR5 issuers (which include companies on prescribed markets such as AIM and the NEX Exchange Growth Market) within the definition of RLEs which are 'subject to their own disclosure requirements' was removed on 26 June 2017. However, these entities are now subject to Part 21A and as such, will still be subject to their own disclosure requirements and capable of being registrable RLEs. Note that group structures which include eligible Scottish partnerships should review their PSC Register given that these bodies are now within the PSC Register regime.

All RLEs should therefore be subject to some form and extent of disclosure of their major controlling parties, whether via a PSC Register or otherwise.

Again, as with PSCs, an RLE must also be 'registrable' to be included on a PSC Register.

What are Other Registrable Persons (ORPs)?

'Other registrable persons' must also be included in the PSC Register. These are corporations sole, governments, government departments, international organisations (whose members include two or more countries or their governments), and UK local authorities or local government bodies ([s 790C\(12\) CA 2006](#)).

These entities will not be PSCs or RLEs, but they cannot be 'looked through' to find one, and so should be included on the PSC Register themselves. Required particulars for an ORP are set out at s 790K(2) and do not need to be confirmed.

In practice, the vast majority of companies and LLPs will not have any ORPs, and so this Guide does not cover them further.

What does it mean for an interest to be held indirectly?

Direct and indirect interests (ie shares and rights held *directly* or *indirectly*) must be amalgamated for the purposes of determining whether any of the PSC conditions are satisfied.

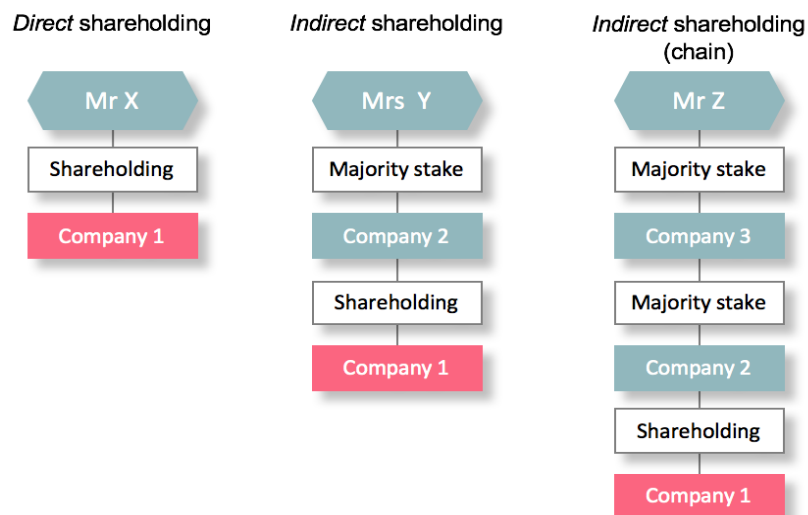
An individual (or legal entity) holds a share or right indirectly if it has a 'majority stake' in another entity which holds that interest directly, or there is a chain of legal entities (connecting the individual to the direct holder), each of which has a 'majority stake' in the entity immediately below.

An individual (or legal entity) holds a 'majority stake' in an entity if it:

- holds a majority of the voting rights in that entity;
- is a member of that entity and has the right to appoint or remove a majority of the board of directors (or if the entity has no board, the equivalent management body);
- is a member of that entity and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights; or
- has the right to exercise, or actually exercises, dominant influence or control over that entity.

A right 'to appoint or remove a majority of the board of directors' has the same meaning as in the context of the PSC conditions.

The following examples illustrate direct and indirect interests held by Mr X, Mrs Y and Mr Z in Company 1.



What makes a PSC or RLE 'registrable' or 'non-registrable'?

Once an individual or legal entity is identified as being a PSC or RLE, the next question is whether that PSC or RLE is 'registrable'.

If a PSC or RLE holds any shares or rights *directly* in the relevant entity, they will always be 'registrable' and must be included in the PSC Register of the company or LLP in which it has the direct interest.

If a PSC or RLE only holds shares or rights *indirectly* in a company or LLP they will be 'non-registrable' for the purposes of that company or LLP's PSC Register if the entity through which the particular interest is held is an RLE. It may be that a PSC or RLE holds multiple interests in different manners. If it holds *any* of those interests otherwise than via an RLE, it must be registered (see Company 4 in the Worked Example on page 19).

Where there is a chain of entities, provided that a 'majority stake' is held throughout the chain and at least one entity lower in the chain is a registrable RLE, the individual at the top need not be entered into the PSC Register of the entity at the bottom of the chain.

The rationale behind allowing these PSCs (or other RLEs) to be non-registrable is that they should be discoverable by virtue of the registered RLE being subject to its own disclosure requirements. Therefore, with all PSC Registers taken together, along with other disclosure regimes, the ultimate PSCs should become discoverable, achieving the desired transparency without unnecessary duplication at each individual level.

Registrable PSCs and RLEs *must* be entered onto the register. 'Non-registrable' PSCs and RLEs do not need to be included. In fact, 'non-registrable' PSCs *must* be omitted.

What is the meaning of 'significant influence or control' in the fourth and fifth conditions for PSCs?

BEIS has issued [Statutory guidance on the meaning of 'Significant influence or control' over companies \(Company Statutory Guidance\)](#) which has been updated to reflect the position as at 26 June 2017. A draft of the amended statutory guidance was laid before Parliament on 26 June 2017 and will come into force after 40 days.

BEIS has also issued [Statutory guidance on the meaning of 'Significant influence or control' over LLPs \(LLP Statutory Guidance\)](#).

At a high level, both sets of guidance clarify that 'significant influence' and 'control' are alternatives. A person has 'control' of a company or trust/firm where he has the 'power to direct its policies and activities'. A person has 'significant influence' if he can direct that 'the company or trust adopts those policies or activities which are desired by the holder of the significant influence'. Neither 'control' nor 'significant influence' need relate to financial or operating policies and nor do they have to generate, or be intended to generate, an economic benefit. Also, the right to exercise significant influence or control does not need to actually be exercised for the relevant PSC condition to be satisfied.

Non-exhaustive lists and examples of circumstances which will and will not amount to 'significant influence or control' are provided in the Company Statutory Guidance. The circumstances which would not, on their own, amount to a person having 'significant influence or control' include certain 'excepted roles' – these include professional advisers (eg solicitors), directors and designated members of LLPs. It is made clear in the statutory guidance that all circumstances must be taken into

account in each case in determining whether there is a right of exercise of, or actual exercise of, 'significant influence or control'.

See [FC Feature 23 December 2015](#) for a detailed analysis of the Company Statutory Guidance and LLP Statutory Guidance. Amendments to the statutory guidance, which do not materially affect that analysis, were covered in [FC Feature 1 February 2016](#). Amendments have been made to the statutory and non-statutory guidance following the coming into force on 26 June 2017 of the [PSC Amendment Regulations 2017](#) (save in the case of the LLP Statutory Guidance) and, where notable, have been referred to in the FC SBEEA Guides.

What if a company or LLP has no PSCs or RLEs?

A PSC Register must never be empty. Even if a company or LLP that is required to keep a PSC Register has no PSCs or RLEs, it must still keep a PSC Register and include a statement that it has no PSCs. Annex 2 (or Annex 4 for LLPs) to the [PSC Register Guidance](#) prescribes the wording which *must* be used:

'The [company/LLP] knows or has reasonable cause to believe that there is no registrable person or registrable relevant legal entity in relation to the [company/LLP].'

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What information about registrable PSCs and RLEs must be recorded on the PSC Register?

A PSC Register must record the 'required particulars' of all registrable PSCs and registrable RLEs. The company must note an entity in the PSC Register as soon as it becomes aware that it is a registrable RLE. However, the company must not enter any of an individual's particulars into the register until they have all been confirmed.

What are the 'required particulars'?

The 'required particulars' for registrable PSCs and RLEs are prescribed by [s 790K CA 2006](#), as follows:

Registrable PSC	Registrable RLE
Name	Corporate or firm name
A service address	Registered or principal office
The country or state (or part of the UK) in which the individual is usually resident	The legal form of the entity and the law by which it is governed
Nationality	If the legal entity is entered on a register in the UK (eg the Charity Commission register) or overseas (eg the central public register of companies in another country), this must be noted
Date of birth	
Usual residential address (no need to repeat if same as service address)	
The date on which the individual became a registrable person in relation to the company (or LLP)	The date on which it became a registrable RLE in relation to the company (or LLP)

The nature of his or her control over that company (or LLP)	The nature of its control over that company (or LLP)
If, in relation to that company (or LLP), any restrictions on using or disclosing any of the individual's PSC particulars are in force	

Recording the 'nature of control' requires a statement detailing which 'specified condition(s)' that particular PSC or RLE meets, with a quantification of its interest where relevant. For a PSC or RLE that meets one or more of the first three conditions (regarding shareholding, voting rights and the right to appoint or remove directors), the register is not required to identify whether they also meet the fourth condition (regarding 'significant influence').

In order to record the 'nature of control', the prescribed wording *must* be used. The wording is set out in the [PSC Register Guidance](#) at Annex 2 for companies and Annex 4 for LLPs.

For existing companies and LLPs that completed their PSC Register for the first time in April 2016, the [PSC Register Guidance](#) states that the 'date on which the individual became a registrable person [or RLE]' will be 6 April 2016. For companies which, as at 26 June 2017, are newly in-scope entities, the [PSC Register Guidance](#) states that the 'date on which the individual became a registrable person (or RLE)' will be 26 June 2017 (note that this does not appear to be reflected in the [PSC Amendment Regulations 2017](#)).

When do the required particulars for registrable PSCs and RLEs have to be entered into the PSC Register?

From 26 June 2017 onwards, the requirement to enter information into the PSC Register is subject to a time limit of 14 days. In relation to required particulars, the obligation is to enter that information in the PSC Register within 14 days commencing the day after:

- in the case of an individual who is a registrable PSC, all the required particulars are first confirmed ([s 790M\(2\) CA 2006](#)); and
- in the case of a registrable RLE, the company or LLP (whose register the RLE is being entered into) first having all the required particulars of the RLE ([s 790M\(5\)](#)).

Note that the requirements for filing this information with the registrar changed on 26 June 2017 such that, broadly, the entry in the PSC Register must be notified to the registrar within 14 days of it being made – see FC SBEEA Guide: Part 2 for further information.

If a company or LLP has elected to maintain its registrable PSC and RLE information on the central register (see FC Guide SBEEA: Part 2), the requirement is to provide this information to Companies House within the time periods set out in [s 790M\(2\) and \(5\)](#), ie within the same time periods in which it would have been required to enter the information in its own PSC Register if it had not made the election (therefore, notification to the registrar is earlier than if it maintained its own PSC Register).

Newly in-scope entities

Newly in-scope entities must make an entry in their PSC Register within 14 days of 24 July 2017, ie 7 August 2017.

If the RLE or PSC information is known (and in relation to PSC information only, confirmed) on 24 July 2017, the [PSC Register Guidance](#) states that the PSC information must be entered into the PSC Register within 14 days of 24 July 2017 (ie by 7 August 2017). For companies and LLPs which established their PSC Register for the first time when the regime was introduced in April 2016, the date on which a PSC or RLE became registrable was stated (in the [PSC Register Regulations 2016](#)) to be 6 April 2017. There is no equivalent provision in the [PSC Amendment Regulations 2017](#), but the [PSC Register Guidance](#) states that the date that the individual/RLE became registrable for newly in-scope entities will be 26 June 2017.

If any necessary PSC or RLE information is not known (or, where relevant, not confirmed) on 24 July 2017, there are statements which must be entered into the PSC Register within 14 days of 24 July 2017 (ie 7 August 2017). See page 16 for further information.

How does a company or LLP 'confirm' required particulars?

Under [s 790M\(9\) CA 2006](#), a person's required particulars, a change to such particulars, and the date of any relevant change with respect to a person, are 'confirmed' if:

- (a) the person supplied or confirmed them to the company or LLP (whether voluntarily or otherwise);
- (b) another did so but with that person's knowledge; or
- (c) they were included in a statement of initial significant control delivered to the registrar under [s 9 CA 2006](#) by subscribers wishing to form the company.

What are the obligations on a company or LLP if there is a change to required particulars?

If the company or LLP has reasonable cause to believe that there has been a change to the information of a PSC or RLE on its register, including that the PSC or RLE has ceased to be registrable (a 'relevant change'), it has obligations to notify the relevant PSC or RLC in order to seek confirmation and the details of the change. See page 16 for further details (including what must be entered while the company or LLP is obtaining the new information).

Relevant changes must be reflected in the PSC Register of the company or LLP (together with the date of the change) within 14 days commencing the day after:

- in the case of an individual who is a registrable PSC, all the changes to the required particulars resulting from the relevant change, and the date of the relevant change are first confirmed ([s 790M\(6\) CA 2006](#)); and
- in the case of a registrable RLE, the company or LLP (whose register the RLE is being entered into) first having details of all the changes to the required particulars resulting from the relevant change and the date of the relevant change ([s 790M\(6A\)](#)).

Note that the requirements for filing this information with the registrar changed on 26 June 2017 such that, broadly, the entry in the PSC Register must be notified to the registrar within 14 days of it being made – see FC SBEEA Guide: Part 2 for further information.

If a company or LLP has elected to maintain its registrable PSC and RLE information on the central register (see FC Guide SBEEA: Part 2), the requirement is to provide this information to Companies House within the time periods set out in [s 790M\(6\) and \(6A\)](#), ie within the same time periods in which it would have been required to enter the information in its own PSC Register if it had not made the election.

What do companies or LLPs enter onto the PSC Register while searching for registrable PSCs, or confirming information?

While entities are in the process of taking the required steps to find persons or entities which need to be entered, the PSC Register must record this. Unless, on 6 April 2016, a company or LLP was immediately able to confirm the required information, it was required to enter the following wording (set out in the [PSC Register Guidance](#)) in its register.

'The [company/LLP] 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/LLP]'

In relation to newly in-scope entities, unless PSC information is known and confirmed as from 26 June 2017, the above wording must be added to the PSC Register within 14 days of 24 July 2017 (ie 7 August 2017).

Similarly, the PSC Register must reflect the situation where a company or LLP:

- knows or has reasonable cause to believe that a registrable person exists, but has not yet identified them;
- has identified a registrable person, but has not yet confirmed all the required particulars; or
- is not required to carry out the above, but investigations into potential PSCs are ongoing.

Again, the wording which must be entered is set out in the [PSC Register Guidance](#) (Annex 2 for companies and Annex 4 for LLPs), and [Part 4 PSC Register Regulations 2016](#).

Where the above statements cease to be true, that must be entered on a company or LLP's PSC Register, giving the date.

Wording is also prescribed for use where certain notices have been given, or certain court orders made in relation to a company or LLP's PSC Register (see Annexes 2 and 4 to the [PSC Register Guidance](#), as appropriate).

As of 26 June 2017, whenever a statement as to the company or LLP's search for (or, in the case of individuals, confirmation of) information to be entered into its PSC Register changes or is no longer correct, that must be recorded in the PSC Register within 14 days of that being the case. The registrar must be notified of the change 14 days after it is recorded in the PSC Register. If a company or LLP has elected to maintain its registrable PSC and RLE information on the central register (see FC Guide SBEEA: Part 2), the requirement is to notify Companies House within the same 14-day period, ie within the same time period in which it would have been required to enter the information in its own PSC Register if it had not made the election (ie earlier than if it maintained its own PSC Register).

Can information on the PSC Register be protected from public disclosure?

Usual residential address

A PSC's usual residential address will not be publicly available on the company or LLP's PSC Register or on the public register held by the registrar. The regime for protecting company directors' usual residential address is to be applied to PSC information ([s 790ZF CA 2006](#)). [Part 6 PSC Register Regulations 2016](#) makes provision for circumstances in which a PSC's usual residential address may be disclosed by the registrar to specified public authorities and credit reference agencies.

Day of birth

A PSC's full date of birth will be publicly available on the company or LLP's own PSC Register, but only the month and year (and not the day) will be available on the public register held by the registrar.

Protection regime

There is provision ([PSC Register Regulations 2016](#)) for a PSC to apply to have information withheld from the public register (or to prevent it from being shared with certain agencies) if, broadly speaking, that PSC reasonably believes that the activities of the company or LLP, or his association with the company or LLP, mean that disclosure of the information will put him (or a person living with him) at serious risk of being subjected to violence or intimidation. [Parts 6](#) and [7 PSC Register Regulations 2016](#) set out the protection categories and application process. Companies House has released guidance notes for companies, SEs and LLPs covering this regime – [Restricting the disclosure of your information \(companies and SEs\)](#) and [Restricting the disclosure of your information \(LLPs\)](#).

Preventing the sharing of a residential address with credit reference agencies

[Part 6](#) provides for individuals who are, or propose to become, registrable PSCs (or, with the consent of those individuals, companies or LLPs or subscribers to the memorandum, on their behalf) to make an application to the registrar of companies to require the registrar to refrain from disclosing that individual's usual residential address to a credit reference agency. The requirements for such applications are set out in [regulations 25](#), [26](#) and [27](#) (these three regulations each covering the different possibilities as to who can make an application).

Preventing disclosure of secured information

[Part 7](#) provides the wider-ranging regime under which a PSC's 'secured information' can be protected, such that it is not publicly available (whether: (a) via a request for inspection; or (b) from copies of the company or LLP's own PSC Register or, from 30 June 2016, on the public register). 'Secured information' is all the required particulars of a PSC which must, under [s 790K\(1\) CA 2006](#), be included on a PSC Register (save for the statement as to restrictions on disclosure).

In order to benefit from the Part 7 protection regime, an application must be made to the registrar by individuals who are, or propose to become, registrable PSCs (or, with the consent of those individuals, companies or LLPs or subscribers to the memorandum, on their behalf). The guidance lists the Companies House forms for use in these applications. Samples of these forms are available to view via links in Part 3 Schedule 2 of Volume 2 of the Registrars' Rules. However, to submit an application form, Companies House should be contacted for a usable copy of the relevant form.

Once an application has been made (and, if made by an individual, notified to the company or LLP), the company or LLP is prohibited from using or disclosing the secured information (save for limited purposes set out in [regulation 45 PSC Register Regulations 2016](#)) until it receives notification that the

application was unsuccessful (or withdrawn) or that a successful determination has been revoked. In effect, this means that the secured information remains on the PSC Register, but the company or LLP must refuse a request for inspection or a copy of any parts of the PSC Register containing that information.

Until an application is determined by the registrar (or withdrawn), he must not use or disclose the secured information and it must be omitted from the public register. Once determined, this prohibition continues if:

- the application was successful (subject to [regulation 43 PSC Register Regulations 2016](#));
- the application was unsuccessful and 42 days from the date of the determination notice has not passed;
- the application was unsuccessful and the determination is being appealed; or
- the application was unsuccessful and the determination has been successfully appealed.

Where the prohibition on the registrar using or disclosing secured information applies, there are certain situations where that information may be disclosed by the registrar. These are detailed in [regulation 34 PSC Register Regulations 2016](#). These include disclosure to a specified public authority (subject to satisfaction of conditions in Part 1 Schedule 4 [PSC Register Regulations 2016](#)) and, from 26 June 2017 (pursuant to the [PSC Amendment Regulations 2017](#)), disclosure of certain secured information (detailed in [regulation 34\(3A\)](#)) to credit institutions and financial institutions (subject to satisfaction of conditions in Part 2A Schedule 4 [PSC Register Regulations 2016](#), as amended by the [PSC Amendment Regulations 2017](#)).

If none of these apply, the registrar must make the secured information available as soon as reasonably practicable after 42 days from the date of the determination notice or, if there has been an appeal which was unsuccessful, from the date of the dismissal of that appeal

Transitional arrangements ([regulation 46 PSC Register Regulations 2016](#)) provided that if an individual was a PSC on 6 April 2016 and had made an application for protection of secured information on or before 30 June 2016 which was unsuccessful, the registrar could not, during a 'protected period' after determination of that application, disclose or include on the public register any of that person's secured information. If the individual ceased to be a PSC by the end of that 'protected period', the secured information remained undisclosed and off the public register. The relevant company or LLP was also prohibited from using or disclosing the secured information during the protected period (save for limited purposes) and, if the relevant individual ceased to be a PSC, thereafter. The 'protected period' was 12 weeks and broadly ran from the date of the application or, if appealed, the date of the appeal. The opportunity, if an application was unsuccessful, for the applicant to keep PSC information from becoming public indefinitely (by disposing of the relevant rights or interests) only applied where the applicant was registrable on 6 April 2016 and the application was made on or before 30 June 2016. If an unsuccessful application was made after that date, or the relevant PSC was not registrable on 6 April 2016, a disposal (including one made during the 42-day period after notification of an unsuccessful protection application) was simply part of the information entered in relation to that individual on the relevant PSC Register, and became publicly available.

Under paragraph 5 Schedule [PSC Amendment Regulations 2017](#), the same 'protected period' regime is in place for registrable PSCs of newly in-scope entities. This applies where:

- a company in existence immediately before 26 June 2017 was not subject to the PSC regime but, as a result of the amended [s 790B\(1\)\(a\) CA 2006](#), was brought within the PSC regime;
- on that day, an individual is a registrable PSC;

- that individual makes an application for protection of his secured information before 24 July 2017; and
- that application is unsuccessful.

Eligible Scottish partnerships also benefit from the same protected period regime (as set out in [regulation 82 Scottish Partnerships \(PSC Register\) Regulations 2017](#)).

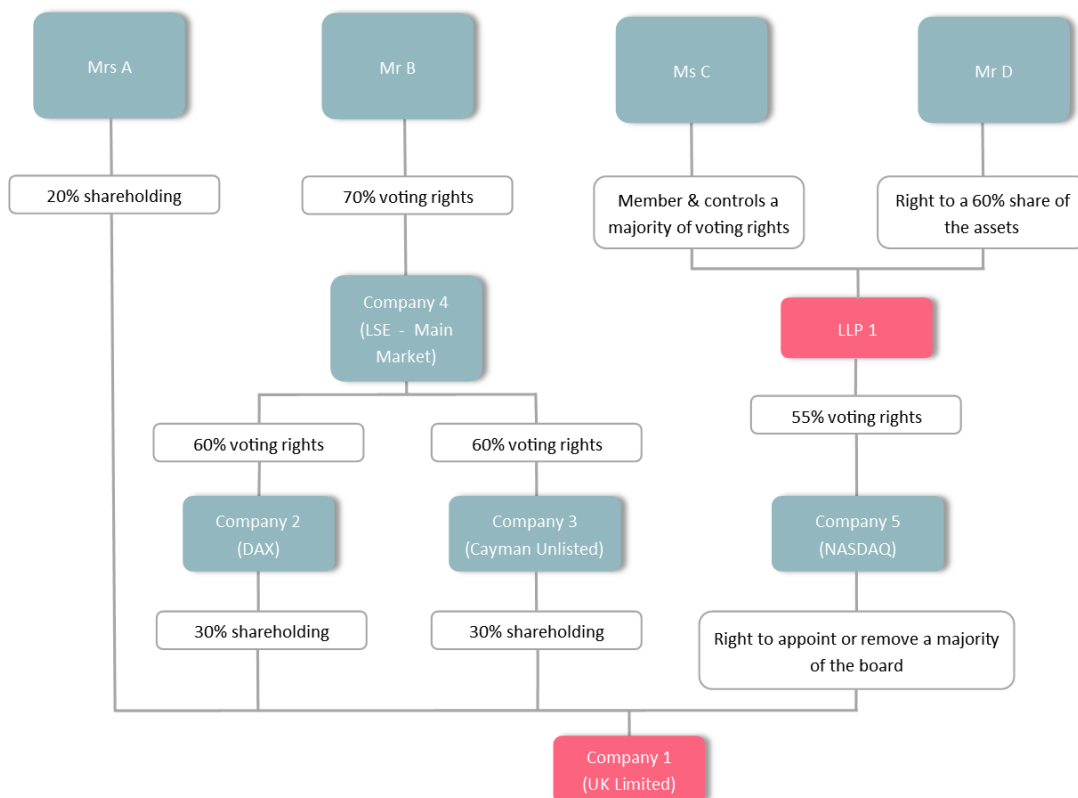
As well as the specific guidance mentioned above, the regime for suppressing PSC information in exceptional circumstances is also summarised in Annex 1 of the [PSC Register Guidance](#).

RLEs do not benefit from any such protection regime.

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Worked example

The following diagram gives an example of how different ownership structures are reflected on the PSC Register:



This example is considered on the basis that all relevant circumstances are set out in the above diagram. Relationships between individuals and entities are described in terms which reflect those in the 'specified conditions' and statutory thresholds for a 'majority stake'.

Only two of the above entities are required to maintain a PSC Register: **Company 1** and **LLP 1**.

The other entities are not required to keep a PSC Register, because:

- Company 2 has voting shares admitted to trading on a regulated market in an EEA state other than the UK;
- Company 3 is not a UK company;
- Company 4 is a company with voting shares admitted to trading on the Main Market of the London Stock Exchange¹; and
- Company 5 has voting shares admitted to trading on one of the markets listed in Schedule 1 [PSC Register Regulations 2016](#).

Below are the registrable PSCs and RLEs that will need to be included on the PSC Register of each entity:

Company 1	LLP 1
Company 2	Ms C
Company 4	Mr D
Company 5	

Company 1's PSC Register:

- **Mrs A does not have significant control** of Company 1 (her shareholding does not exceed 25%). She is not a PSC, and therefore **not registrable**.
- **Company 2** is an **RLE** because it is a legal entity which would come within the definition of a PSC if it were an individual (due to its >25% shareholding), and it is subject to its own disclosure requirements (due to its shares being admitted to trading on a regulated market within the EEA). It is **registrable** because it holds the relevant interest *directly*.
- **Company 3** is **not an RLE** because, as an unlisted overseas company, it does not fall within the statutory definition of a legal entity that is 'subject to its own disclosure requirements'. It is **not registrable**, since only '*relevant* legal entities' may be entered on the PSC Register.
- **Company 4** is an **RLE** because it is a legal entity which would come within the definition of a PSC if it were an individual (due to its *indirect* >25% shareholding), and it is subject to its own disclosure requirements (due to its shares being admitted to trading on the Main Market of the LSE which is a regulated market within the EEA). Company 4 has *two* 30% indirect shareholdings in Company 1 (one through Company 2 and one through Company 3). Company 4 holds majority stakes in each of Company 2 and Company 3. It is **registrable** because Company 3 is not an RLE, and therefore Company 4 holds an indirect interest in Company 1 *other than* via an RLE.

Company 1's PSC Register statement in respect of Company 4's 'nature of control' would be that, under the 'first condition', it has an indirect holding of more than 50%, but less than 75%

¹ Note: if Company 4's voting shares were admitted to trading on AIM (rather than the Main Market), it *would*, as of 26 June 2017, be required to keep a PSC Register. Prior to 26 June 2017, it would not have been required to do so as UK incorporated companies with shares traded on AIM are DTR5 issuers and, before 26 June 2017, DTR5 issuers were exempt from the PSC regime.

of the shares in Company 1. This is because the two indirect 30% shareholdings are amalgamated.²

- **Mr B** is an individual with '**significant control**' (due to his *indirect* 60% shareholding). He is taken to hold those interests indirectly due to the 'majority stake' he holds in Company 4 (and so on, down the chain). However, he is a **non-registrable** individual, as he holds no interest other than those which he holds via at least one RLE. This means that his interest in Company 1 can be discovered via a means other than Company 1's PSC Register.
- **Company 5** is an **RLE** because it is a legal entity which would come within the definition of a PSC if it were an individual (due to its 'right to appoint or remove a majority of the board of directors'), and it is subject to its own disclosure requirements (due to its listing on one of the markets specified in the [PSC Register Regulations 2016](#)). Much like Company 2, it is **registrable** because it holds the relevant interest *directly*.
- **LLP 1** is an **RLE** because it is a legal entity which would come within the definition of a PSC if it were an individual (due to its *indirect* holding of a 'right to appoint or remove a majority of the board of directors'), and it is subject to its own disclosure requirements (due to the PSC regime applying to LLPs). It is taken to hold that right indirectly because of its 'majority stake' in Company 5. However, it is a **non-registrable** RLE as it holds no interest other than through another RLE (ie Company 5). This means that its interest in Company 1 can be discovered via a means other than Company 1's PSC Register.
- **Ms C** is an individual with '**significant control**' over Company 1 (due to her *indirect* holding of the 'right to appoint or remove a majority of the board of directors'). She is taken to hold that interest indirectly due to the 'majority stake' she holds in LLP 1 (and so on, down the chain). However, she is a **non-registrable** individual, as she holds no interest other than that which she holds via at least one RLE. This means that her interest in Company 1 can be discovered via a means other than Company 1's PSC Register.
- **Mr D does not have significant control** of Company 1. He is not taken to hold the 'right to appoint or remove' indirectly because his right to share in 60% of the assets of LLP 1 does not qualify as a 'majority stake' in that LLP. As a result, he is not a PSC, and therefore **not registrable**.

LLP 1's PSC Register:

- **Ms C** is an individual with '**significant control**' over the LLP (due to her control over a majority of the voting rights). She is a **registrable** individual because she holds the interest *directly*.
- **Mr D** is also an individual with '**significant control**' over the LLP (due to his right to share in 60% of the assets). While that interest did not constitute a 'majority stake' in LLP 1 for the purpose of indirect holding of rights in Company 1, it does constitute having 'significant

² Note: if Company 4's voting shares were admitted to trading on AIM (rather than the Main Market), Company 4 *would* as of 26 June 2017, be included on the PSC Register of Company 1 as it is a legal entity which would be a PSC if it were an individual (due to its indirect >25% shareholding) and it is subject to its own disclosure requirements which, as of 26 June 2017, are the obligation to maintain a PSC Register (prior to 26 June 2017, this was by virtue of being a DTR 5 Issuer).

influence and control' in an LLP. He is a **registrable** individual because he holds the interest *directly*.

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Now that a company or LLP has set up its PSC Register, what does it have to do?

Where does a PSC Register need to be kept?

Under [s 790N CA 2006](#), a company or LLP's PSC Register must be kept available for inspection at its registered office, or at a Single Alternative Inspection Location (**SAIL**) under [s 1136 CA 2006](#). A company or LLP must give notice to the registrar of the place where its PSC Register is kept available for inspection and of any change in that place (unless it has always been kept at the registered office).

[Chapter 4 Part 21A CA 2006](#) provides an alternative scheme, whereby private limited companies and LLPs can, from 30 June 2016, elect to maintain this information on the central register maintained by the registrar of companies. See FC SBEEA Guide: Part 2.

Who can ask to inspect a PSC Register?

Under [s 790O CA 2006](#), a company or LLP's PSC Register must be open to the inspection of any person, without charge. Any person may require a copy of a company or LLP's PSC Register, or any part of it, on payment of a fee of £12.

[S 790O](#) sets out the information that a request must cover (which includes the purpose for which the information is to be used). [S 790P CA 2006](#) sets out detailed information covering how a company or LLP must respond to a request for inspection or a copy of the PSC Register.

To what extent does a PSC Register need to be kept up-to-date?

A company or LLP is under an obligation to keep its PSC Register and the information contained in it up to date. Failure to do so is a criminal offence.

If a company or LLP has reasonable cause to believe that there has been a change to the information of a PSC or RLE contained on the PSC Register (or that the PSC/RLE has ceased to be registrable), it must give notice to the relevant PSC or RLE requiring confirmation and details of the change within one month ([s 790E\(6\) and \(7\) CA 2006](#)). That notice must be given as soon as reasonably practicable and (as of 26 June 2017), in any event, before the end of 14 days commencing on the earlier of: (a) the day after the company or LLP learns of the change; and (b) the day after it first has reasonable cause to believe the change has occurred ([s 790E\(5\)](#)). For FromCounsel's precedent s 790E notices, see [Precedent: Notice under s 790E: From company to registrable individual with significant control on change of particulars](#) and [Precedent: Notice under s 790E: From company to registrable relevant legal entity on change of particulars](#).

Even if the new information is not immediately available, it must be made clear on the PSC Register that the old information is no longer accurate. The register should set out the date at which the old information ceased to be accurate and the status of investigations into the new information. Mandatory wording is set out in Annexes 2 and 4 to the [PSC Register Guidance](#). As of 26 June 2017,

the entry in the PSC Register must be made within 14 days of the need for it arising and must also be notified to the registrar within a further 14 days of the entry being made in the PSC Register.

When a company or LLP becomes aware that a PSC or RLE has ceased to be registrable as such, it must record the date at which they ceased to be so as soon as possible. As of 26 June 2017, under [s 790M\(6\) and \(6A\) CA 2006](#), the fact that an individual or PSC has ceased to be registrable must be entered in the PSC Register within 14 days (see page 15 for further details on the time period) and must also be notified to the registrar within a further 14 days of the entry being made in the PSC Register. The information about that person or entity must be kept on the PSC Register for ten years from the date on which they ceased to be a registrable PSC or RLE (and Companies House will keep the information indefinitely).

PSCs and RLEs are also required (under [s 790H CA 2006](#)) to notify the relevant company or LLP if there has been a change to his (or its) particulars (including ceasing to be a PSC or RLE) and he (or it) has not received a s 790E notice from the company within a month of when the change occurred. A s 790H notification must be sent within two months of the change (or, if later, one month from when the individual or entity discovered the change). For FromCounsel's precedent s 790H notification, see [Precedent: Notification under s 790H: To company by registrable individual with significant control or registrable relevant legal entity on a change of particulars](#).

From 30 June 2016 to 25 June 2017, companies and LLPs with PSC Registers were required to update the PSC and RLE information filed at Companies House annually as part of filing its confirmation statement. From 26 June 2017, changes made in the PSC Register must be notified to Companies House within 14 days of the change being made in the register ([s 790VA CA 2006](#)) and companies and LLPs must confirm that they have complied with their notification obligations in the annual confirmation statement (see FC SBEEA Guide: Part 2 for further information on the confirmation statement regime).

If a company or LLP opts to keep its PSC Register centrally with the registrar, it is required to update PSC and RLE information in the time period designated for updating of the PSC Register in circumstances where there is no central register election in place ([s 790ZA CA 2006](#)).

What steps must companies and LLPs (required to keep a register) take to identify PSCs?

Reasonable steps must be taken by the company or LLP to determine whether it has any PSCs or RLEs and who these are ([s 790D CA 2006](#)). Failure to take such steps (which includes sending notices referred to below) is a criminal offence.

While reasonable steps are outlined by reference to each of the conditions in Chapter 2 (and, for LLPs, in Annex 4) of the [PSC Register Guidance](#), these are not definitive and it is made clear that the required actions will depend on the circumstances of each case.

In order to obtain the required information, the entity should serve a notice under [s 790D\(2\)](#) requesting information on anyone it knows or has reasonable cause to believe is a PSC or RLE. For FromCounsel's precedent s 790(2) notices, see [Precedent: Notice under s 790D\(2\) – From company to registrable individual with significant control](#) and [Precedent: Notice under s 790D\(2\) – From company to registrable relevant legal entity](#).

A notice (under [s 790\(D\)\(5\)](#)) can also be served on anyone that the company or LLP knows or has reasonable cause to believe knows who a PSC or RLE is. For FromCounsel's precedent s 790(D)(5)

notice, see [Precedent: Notice under s 790D\(5\): From company to person who knows the identity of a registrable person or relevant legal entity.](#)

Failure of a recipient of a notice to respond to a notice within one month is a criminal offence.

Information about both PSCs and RLEs needs to be complete before it is entered into the PSC Register. As explained previously, information about individual PSCs (but not RLEs) must always be 'confirmed' (under [s 790M\(9\) CA 2006](#)) before entry onto the PSC Register.

PSCs and RLEs are required, within one month of satisfying conditions (a) to (e) of [s 790G\(1\) CA 2006](#), to notify the relevant company or LLP that they are registrable (and provide the information in [s 790G\(2\)](#)). A failure to do so is a criminal offence. In most circumstances, conditions (a) to (e) will be satisfied one month after the relevant PSC or RLE becomes registrable. For FromCounsel's precedent s 790G notifications, see [Precedent: Notification under s 790G To company by a registrable individual with significant control](#) and [Precedent: Notification under s 790G: To company by registrable relevant legal entity.](#)

Companies and LLPs that are required to keep a PSC Register must remember that, as of 26 June 2017, any entry in the PSC Register (required particulars, changes in required particulars, and any other additional matters to be entered into the register) must be notified to Companies House within 14 days (starting with the day after the change is made) ([s 790VA CA 2006](#)). It is a criminal offence to fail to do this.

Where companies or LLPs have made a central register election in relation to information to be entered on the PSC Register, the time limit for submitting the information to Companies House is that which is in place for entry of the information into the PSC Register if an election were not in place.

What is the position for newly in-scope entities?

For details of the obligations on entities which, as at 26 June 2017, are newly in-scope entities, see FC SBEEA Guide: Part 2.

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How are PSC Register obligations enforced?

What are the consequences for a company or LLP which fails to keep a PSC Register when it is required to do so?

[S 790M CA 2006](#) stipulates that where a company or LLP fails to comply with the duty to keep a PSC Register, an offence is committed by the company or LLP, and every officer of the company, or designated member of the LLP, who is in default.

[S 790N CA 2006](#) stipulates that where a company or LLP fails to comply with the duty to keep a PSC Register open for inspection in accordance with that section, an offence is committed by the company or LLP, and every officer of the company, or designated member of the LLP, who is in default.

A person guilty of an offence under this section is liable on summary conviction to a fine and, for continued contravention, a daily default fine ([s 790M\(13\)](#)).

Under [s 790F CA 2006](#), an offence is also committed if a company or LLP fails to comply with any aspect of [s 790D CA 2006](#) (duty to investigate and obtain information) or [s 790E CA 2006](#) (duty to keep information up-to-date). An offence is committed by the company and every officer of the company

who is in default or the LLP and every designated member of the LLP who is in default. The offence is punishable by imprisonment (for individuals) and/or a fine (which can potentially be unlimited) ([s 790F\(2\)](#)).

What are the consequences for a company or LLP which refuses inspection or fails to provide a copy?

Where an inspection (or copy), is required under [s 790Q CA 2006](#) (see above), and the company or LLP refuses or fails to provide the copy, an offence is committed by the company and every officer of the company who is in default or the LLP and every designated member of the LLP who is in default ([s 790Q CA 2006](#)). A person guilty of an offence under this section is liable on summary conviction to a fine and, for continued contravention, a daily default fine ([s 790Q\(2\)](#)). In such an instance, a court may also make an order compelling an immediate inspection, or directing that the copy required be sent to the person requesting it.

The only exception to this is where the refusal or default is in accordance with an order of the court. A company or LLP in receipt of a request under [s 790Q](#) may (within five days of the request) apply to the court for a direction not to comply with the request due to the inspection or copy not being sought for a 'proper purpose'.

What are the consequences for PSCs or RLEs who fail to provide their information or respond to notices?

Where a company or LLP is unable to obtain information from a PSC or RLE (or to get confirmation of this information), that company or LLP can impose restrictions on the relevant shares or rights. The restrictions include limiting the transferability of, and exercise of rights in relation to, the relevant interest (being shares, voting rights or rights to appoint or remove directors of the company, or equivalent management body).

The [PSC Register Regulations 2016](#) set out the process to follow in order to do this. This involves service of an initial notice (under [s 790D](#) or [s 790E](#)) requesting information, to which the addressee has a month to respond, and service of a warning notice setting out planned restrictions to which, again, the addressee has a month to respond, failing which the restrictions can be imposed. For FromCounsel's precedent warning notice, see [Precedent: Warning Notice: From company for non-compliance with a s 790D or s 790E notice](#).

If restrictions are imposed, a further notice confirming that restrictions are in place must be served and an entry to that effect made on the PSC Register (prescribed wording is provided). Chapter 8 of the [PSC Register Guidance](#) sets out the types of restrictions that can be applied. For FromCounsel's precedent restrictions notice, see [Precedent: Restrictions notice: From company for non-compliance with a s 790D or s 790E notice](#).

Restrictions must be lifted within 14 days if: (a) the required information is provided; (b) a valid reason is provided for not supplying this information; (c) the restriction is unfairly prejudicing a third party's rights; or (d) a court order is issued to this effect. Also, the PSC Register must be updated accordingly. For FromCounsel's precedent notice of withdrawal of a restrictions notice, see [Precedent: Notice of withdrawal of a restrictions notice](#).

Other than the threat of a restrictions notice, an addressee (and, in the case of legal entities, the officers in default) who fails to comply with a notice served under [ss 790D](#) or [790E CA 2006](#) commits

an offence (paragraph 13 Schedule 1B [CA 2006](#)). The offence extends to an addressee who purports to comply with the notice, but in doing so makes a statement that he or it knows to be false in a material particular, or recklessly makes a statement that is false in a material particular.

The offence is punishable by imprisonment or a fine (which can potentially be unlimited), or both (paragraph 13(4) Schedule 1B).

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PSC Register statutory framework and guidance

Acts

[CA 2006](#)

[SBEEA 2015](#) (inserts new Part 21A into CA 2006)

Regulations

[Information about People with Significant Control \(Amendment\) Regulations 2017](#)

[Scottish Partnerships \(Register of People with Significant Control\) Regulations 2017](#)

[Register of People with Significant Control Regulations 2016](#)

[Companies Act 2006 \(Amendment of Part 21A\) Regulations 2016](#) (substitutes s 790C(4)(a) and (8)(a), amending when an individual or RLE will be registrable)

[Limited Liability Partnerships \(Register of People with Significant Control\) Regulations 2016](#)

[European Public Limited-Liability Company \(Register of People with Significant Control\) Regulations 2016](#)

Guidance (pdf)

[Companies House PSC guidance page](#)

[Company statutory guidance on the meaning of "Significant Influence or control" over companies in the context of the Register of People with Significant Control](#)

[Statutory guidance to the meaning of "significant influence or control" over LLPs in the context of the register of People with Significant Control](#)

[Guidance on the meaning of "significant influence or control" over eligible Scottish partnerships in the context of the register of people with significant control](#)

[PSC Register guidance for registered and unregistered companies, SEs, LLPs, and eligible Scottish partnerships](#)

[Guidance for People with Significant Control](#)

[PSC Register summary guidance](#)

[Guidance on restricting disclosure of your information \(companies and SEs\)](#)

[Guidance on restricting disclosure of your information \(LLPs\)](#)

[Guidance on restricting disclosure of your address \(overseas companies\)](#)

Note: FromCounsel has produced a pack of precedent notices for companies to use when obtaining and updating information for its PSC Register. See [Precedents: People with significant control](#).

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Changes to the rectification of the public register at Companies House

Rectification of the register: directors not having consented to act

From 6 April 2016, there will be a new procedure for a person appearing on the public register as a director to apply to the registrar of companies to remove their name if they did not consent to the appointment ([s 1095\(4A\) to \(4D\) CA 2006](#), inserted by [s 102 SBEEA 2015](#)).

Since 10 October 2015, the notice of appointment of a director (or statement of proposed officers on incorporation) has had to include a statement by the company (or the subscribers) that the director has consented to act as such ([ss 12\(3\)](#) and [167\(2\)\(b\) CA 2006](#)). Upon receipt of a notice of appointment, the registrar has to notify the director that he is named as a director of the company and provide information to him on the office and duties of a director ([s 1079B\(2\) and \(3\) CA 2006](#)) ([FC Feature 12 October 2015](#)).

Prior to 6 April 2016, a person who did not consent to act as a director could apply to the registrar under s 1095 CA 2006 and the applicable regulations (the [Registrar of Companies and Applications for Striking Off Regulations 2009 \(2009 Regulations\)](#)) to have details of their appointment removed from the register on the ground that they were falsely appointed. However, the registrar could only remove the information if there were no objections to the application. This meant that companies could thwart an application simply by objecting, without having to provide any evidence in support.

Under the new subsections [1095\(4A\) to \(4D\)](#), where an application is made by a director, or on behalf of a director, to remove material naming him as a director from the register, the registrar must remove that material unless the company objects *and* can provide the 'necessary evidence' to satisfy the registrar that the director consented to act.

An application to rectify the register in this regard must be made in accordance with the 2009 Regulations. The 2009 Regulations are amended by the [Registrar of Companies and Applications for Striking Off \(Amendment\) Regulations 2016](#), which came into force on 6 April 2016, to include provision for an application in the circumstances set out in [s 1095\(4A\) to \(4D\) CA 2006](#).

The [Guidance on the registrar's rules and powers](#) have been updated to include the new procedure for rectification of the register.

Who can make an application for removal?

An application may, like other applications for rectification under the 2009 Regulations, be made either by the person who delivered the relevant information to the registrar, by the company, or by any person to whom the material relates (ie the director in question) ([regulation 4\(7\)\(c\) 2009 Regulations](#)). The application may also be made on behalf of the person named as director, under regulation 4(7A). However, it is only if the application is made by, or on behalf of, the named person, and is accompanied by a statement that the person did not consent to act as director of the company, that the new procedure in [s 1095\(4A\) to \(4D\) CA 2006 applies](#). The Companies House form for the application for removal is [Form RP06](#).

How can a company object to an application?

If the company provides the registrar with the 'necessary evidence' within 28 days of the registrar giving notice of the application, the registrar must not remove the disputed material from the register ([s 1095\(4B\) CA 2006](#)). 'Necessary evidence' is defined as evidence sufficient to satisfy the registrar that the person did consent to act as director of the company, plus a statement by the company that the evidence provided is true and is not misleading or deceptive in any material particular (see [s 1096\(4D\) CA 2006](#) and [regulation 5\(15C\) 2009 Regulations](#)).

When the registrar notifies a company of an application to rectify the register in respect of material naming a person as a director, the notice must include details of the right of the company to provide evidence that the person named *did* consent to act as a director of the company, and the requirements applicable to the exercise of that right (under [regulation 5\(15C\) 2009 Regulations](#)).

What are the possible outcomes of an application?

As we have seen, if the company provides the registrar with the 'necessary evidence' within the 28-day period, the registrar must not remove the material from the register. If it does not, the material is conclusively presumed to be derived from something that is factually inaccurate and the registrar must accept the applicant's statement as sufficient evidence that the material should be removed from the register ([s 1095\(4C\) CA 2006](#)).

The registrar must give notice of the outcome of the application to everyone it notified about the application being made ([regulation 5\(15E\) 2009 Regulations](#)). If the registrar does not remove the information about the director from the register, his notice to the applicant must include a copy of the evidence provided by the company to the registrar demonstrating consent to act. In these circumstances, a director who continues to dispute his appointment will have to seek redress from the court.

What is the practical impact of this new process?

Companies should ensure that, going forward, they document a new director's consent to act, even though such consent is no longer required to be on the appointment form. The new process is only applicable in the case of unauthorised appointment: it does not apply where a director agrees to act but then changes his mind (the director will in that case have to resign from office) or to appointments made with consent but in the context of a dispute as to the ongoing control of a company.

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Rectification of the register: unauthorised registered office addresses

From 6 April 2016, there is a new procedure for any person to apply to the registrar of companies to change the company's registered office address. If the registrar is satisfied that the company is not authorised to use its current registered office address, he is required to change that address ([s 1097A CA 2006](#), inserted by [s 99 SBEEA 2015](#), and the [Companies \(Address of Registered Office\) Regulations 2016](#) (the **Regulations**), made pursuant to [s 1097A\(1\) CA 2006](#)). The Regulations also make equivalent provision in the context of LLPs, and the provisions explained in this Guide in the context of companies are adapted for LLPs and their members accordingly.

This new procedure has been introduced to address the problem that an address may be specified as a company's registered office address, even though the owner of the premises has not agreed to its use for this purpose. A company's registered office address is given legal effect simply by registration at Companies House (without any need for proof of entitlement). As such, a company's use of an unauthorised address will not generally provide grounds for rectification under [ss 1095](#) or [1096 CA 2006](#). Further provision was therefore required to deal with the issue.

The [Guidance on the registrar's rules and powers](#) have been updated to include the new procedure for rectification of the register.

Who can make an application and what must it cover?

An application to change the address of a registered office may be made by any person using Companies House [Form RP07](#) (for a company) or [Form LL RP07](#) (for an LLP) and must:

- state the applicant's name and address;
- identify the company or LLP (as applicable) and the address of its registered office;
- include a statement explaining the grounds of the application; and
- provide any documents or information which support the application.

What happens upon receipt of an application?

The registrar can either dismiss the application if he considers that there is no reasonable chance of it succeeding (in which case he must notify the applicant of that decision) or give notice of the application to the relevant company. This notice must be given to the company at several addresses, including the address of its registered office, the residential and service addresses of directors of the company, and the service address of any company secretary.

The registrar must state that he will change the company's registered office address to a default address unless, within the period specified in the notice (being a period of at least 28 days starting the day after the notice was sent):

- the company changes the address of its registered office (under [s 87 CA 2006](#));
- the company objects to the application and provides evidence to satisfy the registrar that the company is authorised to use the address as its registered office; or
- the application is withdrawn.

How can a company respond to a registrar's notice?

If the company wishes to retain its address, it must lodge its objection to the application and demonstrate its right to use the disputed address. The types of evidence that the registrar may rely on without further enquiry are set out in the Schedule to the [Regulations](#) and comprise documents demonstrating proprietary rights (such as a freehold or leasehold interest), a written agreement to use the premises, or a recent utility bill.

On the other hand, if the company does not wish to retain the address it should change its registered office prior to the expiry of the period specified in the registrar's notice.

What are the possible outcomes of an application?

The registrar must change the company's registered office address to a default address upon expiry of the specified period, if:

- the company has not responded to the registrar; or
- the registrar is satisfied that the company is not authorised to use the address as its registered office.

The default address will be specified in the [Registrar's Rules](#) (and is expected to be an address at Companies House).

The registrar must dismiss the application if either:

- the company has responded to the registrar and it has not been shown to the registrar's satisfaction that the company does not have authority to use the address as its registered office; or
- the company has delivered a notice to change its registered office address within the specified period.

The registrar can also refer the application, or questions relating to it, to the court for determination.

The registrar must notify the applicant and the company of the decision, together with the reasons for it and a copy of any evidence which has been relied upon. If the company's registered office is changed to a default address, the registrar must also provide this address to the company.

The company or the applicant can appeal against the registrar's decision within 28 days of the change to a default address or notice of the application having been dismissed (as applicable) ([s 1097A\(6\) CA 2006](#)). Following the appeal, the court must direct the registrar to register such address as the company's registered office as the court considers appropriate in the circumstances ([s 1097A\(7\)](#)).

What is the effect of a change of registered office address?

If the registrar changes the address of the company's registered office, several duties of the company under CA 2006 (including the duty to make specified company records available for inspection and certain publicity requirements linked to the registered office) are suspended for a period of 28 days, beginning on the day the address was changed.

This temporary suspension gives the company a period of time to notify a new registered office address under [s 87 CA 2006](#) without being in breach of its statutory obligations. However, a company which takes no action during this period will again become subject to those obligations and liable for any failure to comply (it will not be possible to rely on the default address for inspection purposes, as the Regulations expressly state that company records may not be kept or inspected there). The company can collect any documents delivered to the default address; if not, they may be destroyed after 12 months.

Where a company's registered office address is changed by the registrar, documents can be validly served on the company at the previously registered office for a period of 14 days beginning with the day the address was changed ([s 1097A\(4\) CA 2006](#)). This mirrors the position under [s 87\(2\) CA 2006](#) regarding a voluntary change of registered office address by a company.

If the company chooses to change its address from a default address pursuant to [s 87](#), the [Regulations](#) provide that the registrar can require the company to demonstrate that it is authorised to use the proposed new address as its registered office.

What is the practical impact of this new process?

In practice, a company that is inadvertently using an unauthorised address is likely to (and should) deal promptly with the issue by voluntarily changing its address under [s 87 CA 2006](#). Where the registrar has to register a default address, this is intended to be a temporary measure. If the company does not respond to communications, this may give the registrar reasonable cause to believe that it is not carrying on business or in operation, potentially leading to the company's name being struck off the register and the company being dissolved under [s 1000 CA 2006](#).

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Changes to reporting by insolvency office-holders on directors' conduct

What reporting obligations do insolvency office-holders have in relation to directors' conduct?

On 6 April 2016, the way in which office-holders of insolvent companies report on the conduct of directors will be updated. Office-holders for these purposes include the official receiver, a liquidator, an administrator, and a receiver. Under a new [s 7A CDDA 1986](#) (inserted by [s 107 SBEEA 2015](#)), an office-holder in respect of an insolvent company is required to prepare and send a conduct report to the Secretary of State (SoS) about each person who was a director of the company either on the 'insolvency date' (as defined in [s 7A\(10\)](#)), or at any time during the three years preceding that date.

The conduct report must describe any conduct which may assist the SoS in deciding whether to apply for a disqualification order under [s 7\(1\) CDDA 1986](#) and whether to accept a disqualification undertaking under [s 7\(2A\)](#). In addition, should 'new information' come to the attention of the office-holder this must be sent to the SoS as soon as reasonably practicable ([s 7A\(5\)](#)). 'New information' is that which should have been included in the report or would have been included in the report had it been available before the report was sent.

What are the rules governing these conduct reports?

The [Insolvent Companies \(Reports on Conduct of Directors\) \(England and Wales\) Rules 2016](#) (the **Rules**) provide how an office-holder is to prepare and send a conduct report. The Rules also revoke and replace the Insolvent Companies (Reports on Conduct of Directors) Rules (SI 1996/1909), subject to transitional and saving provisions. Provisions for Scotland can be found in the [Insolvent Companies \(Reports on Conduct of Directors\) \(Scotland\) Rules 2016](#) (FC Feature 24 February 2016).

The Rules maintain the [s 7\(4\) CDDA 1986](#) enforcement process (under [s 7\(4\)](#) the SoS or official receiver can require a person to provide information about a person's conduct, or to produce and permit the inspection of relevant books, papers and other records). In accordance with the Rules, the SoS or official receiver can apply to the court for an order directing compliance with any request made under [s 7\(4\)](#).

When does a conduct report have to be submitted?

Reports must be sent by office-holders within three months (shortened from six) of the company's insolvency date ([s 7A\(4\) CDDA 1986](#)) via an electronic portal. Receipt is to be acknowledged by the SoS as soon as reasonably practicable. New information must be submitted in the same manner ([s 7A\(5\)](#)).

If required, the office-holder may apply, within the three-month submission period, to the SoS for an extension of that period explaining why the extension is required. The SoS must, as soon as reasonably practicable, acknowledge receipt and notify the office holder whether the extension is approved and if so, what the extended submission period is.

What happens if an office-holder does not comply with the Rules?

An office-holder who, without reasonable excuse, fails to comply with any of the obligations imposed by [s 7A\(4\) or \(5\) CDDA 1986](#), commits an offence. Upon conviction, the office-holder is liable to a fine and, for continued contravention, is liable to a daily default fine (rule 8).

Do these new conduct report obligations apply to LLPs?

Yes, the [Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016](#) make necessary amendments to the LLP Regulations 2001 to extend the new reporting requirements to LLPs.

What guidance is available for office-holders who are preparing and sending reports?

The Insolvency Service has released [Interim Guidance Notes](#) for the use of the Director Conduct Reporting Service (DCRS), the new electronic portal which will be used for reporting on directors' conduct. Full guidance on the use of the DCRS will be provided later in 2016.

The interim guidance details how to register for the DCRS, how to log in, and how to complete and submit a conduct report. At this stage, however, it does not address the conduct questions within a report.

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