

Scottish partnerships and the PSC regime

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The Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (the “**Scottish Regulations 2017**”) introduce a regime for certain Scottish partnerships similar to that which applies to UK companies and LLPs, with some modifications, requiring “eligible” Scottish partnerships to disclose information relating to people with significant control (“PSC”) over them.

At a glance: points in brief

- Scottish limited partnerships and Scottish qualifying partnerships (“**eligible Scottish partnerships**”) are now required to disclose information relating to people with significant control over them.
- Eligible Scottish partnerships are not required to keep a PSC register but must deliver information relating to their PSC or registrable “relevant legal entity” (as well as any changes to that information) to Companies House.
- Qualifying partnerships are required to register certain other information at Companies House, and all eligible Scottish partnerships will be required to submit annual confirmation statements.

The PSC regime

Eligible Scottish partnerships are defined as all Scottish limited partnerships (“SLPs”) as well as Scottish partnerships which are “qualifying partnerships” (as defined in the Partnership (Accounts) Regulations 2008), that is general partnerships each of whose partners are limited companies.

As with the PSC regime that applies to companies, a PSC is an individual that meets certain conditions (the “PSC Conditions”) in relation to the partnership. A company cannot be a PSC, but certain companies may be “relevant legal entities” (“RLEs”) which are “registrable” in relation to the partnership. A legal entity would be an RLE if it would have met any one or more of the PSC Conditions if it were an individual and will be “registrable” in relation to the relevant partnership unless its interests are all held indirectly through one or more legal entities, at least one of which is a RLE in relation to that partnership.

Conditions to qualify as a PSC

In relation to eligible Scottish partnerships, an individual must meet one or more of the following conditions to qualify as a PSC:

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- (i) directly or indirectly hold rights over more than 25% of the surplus assets of the partnership on a winding up
- (ii) directly or indirectly hold more than 25% of the voting rights in the partnership
- (iii) directly or indirectly hold the right to appoint or remove the majority of the persons entitled to take part in management of the partnership
- (iv) have the right to exercise, or actually exercise, significant influence or control over the partnership
- (v) have the right to exercise, or actually exercise, significant influence or control over the activities of a trust or firm, which in turn satisfies any of the first four conditions in relation to the partnership.

This is similar to the conditions that determine PSCs in relation to companies. Information that is required to be delivered to the registrar includes details of the registrable person's name, address, country of residence, nationality and date of birth. Details of the date on which an individual became a registrable person with significant control over the partnership and the nature of his or her control must also be provided. With respect to a registrable RLE, the entity's name, address, legal form, the register in which it appears and its registration number (if applicable), the date on which it became registrable in relation to the partnership and the nature of its control.

Applying the conditions

BEIS has updated its non-statutory guidance (the “**Guidance**”) to include guidance on various aspects of the PSC regime as they apply to eligible Scottish Partnerships. In most cases, whether or not partners qualify as a PSC or registrable RLE in relation to the partnership will be determined by reference to the partnership agreement. For example, for the purposes of PSC Condition (i), the partnership agreement may have provisions setting out how surplus assets are allocated among the partners on a winding up. If the agreement is silent, then the Scottish Regulations 2017 provide that the default position would be for the assets to be divided equally between the partners. Similarly, in relation to PSC Condition (iii), the Guidance provides that the partnership agreement will need to be reviewed to work out who holds the rights to appoint or remove people entitled to take part in management. The Guidance provides some further colour on the meaning of management, stating that those involved in management may include those who have little involvement in day to day management but have roles and rights such that they could be responsible for strategic management of the business “as a whole”.

For purposes of PSC Condition (iv), BEIS has separately produced statutory guidance on the meaning of “significant influence or control”. A partnership will only need to identify where a PSC or registrable RLE meets PSC Condition (iv) if they do not meet one or more of PSC Conditions (i) to (iii).

The PSC or registrable RLE in relation to a SLP will invariably include the general partner as the partner responsible for the day to day management of the SLP. If the general partner is a registrable RLE, there is no need to look further up the chain to see if anyone has significant control over the general partner and therefore (indirectly) over the SLP, since the registrable RLE is itself subject to the PSC regime and would be required to keep its own PSC register, allowing people to trace the beneficial ownership chain.

It can be expected that some limited partners will meet one or more of the PSC Conditions in relation to a SLP, and *prima facie*, qualify as a PSC or registrable RLE in relation to that partnership. Paragraph 25 of Schedule 1A Companies Act 2006 provides that limited partners in limited partnerships registered under

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the Limited Partnership Act 1907 (“LPA 1907”) will not meet the PSC Conditions (i) to (iii) by virtue of only being a limited partner. As such, ordinarily, where a limited partnership without legal personality holds interests in a company, only the details of general partner(s) will need to be included in the company’s register. However, the Scottish Regulations 2017 do not include a similar provision and it would seem that limited partners who meet one or more the PSC Conditions (including PSC Conditions (i) to (iii)) in relation to a SLP will need to be notified to the registrar.

Duty to investigate and obtain information on PSCs

Eligible Scottish partnerships are under a duty to take “reasonable steps” to determine whether they have a PSC or registrable RLE and if so, to establish their identity. This requires the partnership to, for example, review the relevant partnership agreements to determine whether any partner meets one or more the PSC Conditions. The partnership must issue notices to persons whom they have reasonable cause to believe are PSCs or registrable RLEs in relation to it in order to fill any gaps in the information available to the partnership.

Registration of information relating to PSCs and RLEs

Initial registration of SLPs

Newly registered SLPs will be required to file a “statement of initial control” when applying for initial registration, stating whether on registration there will be a PSC or registrable RLE in relation to the partnership, and including details of any person identified as such.

Duty to deliver information on PSCs and registrable RLEs to the registrar

While companies are required to keep, and maintain their own PSC register, as well as file that information with the Registrar, eligible Scottish partnerships need not keep their own register but are only required to deliver information relating to their PSCs or registrable RLEs directly to the Registrar at Companies House. All existing eligible Scottish partnerships (including SLPs) within scope must deliver such information to the Registrar within 14 days of 24 July 2017 or, if later, the date on which all the required particulars are “confirmed” (with respect to PSCs) or on which the partnership first obtained all the details of the required particulars of the entity (with respect to registrable RLEs). Particulars of individual PSCs in relation to the partnership should not be delivered until they are confirmed.

Duty to keep PSC and registrable RLE information up to date

If an eligible Scottish partnership is aware of any changes with respect to a PSC or registrable RLE, the partnership must notify the Registrar of the change and the date on which the relevant change occurred within 14 days of the day on which all the changes are confirmed (with respect to PSCs) or the day on which the partnership first has details of the changes (with respect to registrable RLEs).

Additional disclosure requirements

The Scottish Regulations 2017 place a few additional disclosure requirements on eligible Scottish partnerships, not all which are directly related to the PSC regime.

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Registration of information relating to qualifying partnerships

In addition to the requirement to deliver information relating to its PSC, existing qualifying partnerships and any general partnerships which subsequently become qualifying partnerships are required to provide certain information to the Registrar, including its name, service address and confirmation that it is a Scottish qualifying partnership, as well as the name and registration number (and register in which it is entered) of each partner in the partnership, within 14 days beginning either on **24 July 2017**, or if later, on the date it becomes a qualifying partnership. This is done on Form SQP1 and on receipt of that information, the Registrar will issue the qualifying partnership with a notice of registration and a registration number for use in subsequent filings. If any change occurs in relation to that information, the qualifying partnership must send notice to the Registrar within 14 days beginning with the day on which it becomes aware of the change.

Confirmation statements

Eligible Scottish partnerships are now required to deliver an annual confirmation statement to the Registrar, confirming that information required to be delivered to the registrar (including the requirement to deliver information relating to any PSCs and registrable RLEs, details of any changes to any SLP that are required to be notified under the Limited Partnership Act 1907, or details of any changes required to be delivered by qualifying partnerships) has been delivered.

For further information on matters highlighted in this briefing, please contact your usual Slaughter and May contact.

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