

Charities and the PSC Register

Lizzie Jones | 31 March 2016

Registered companies must keep a Register of People with Significant Control (**PSC Register**) from 6 April 2016. This new requirement applies to all UK companies and LLPs including charitable companies, community interest companies and trading subsidiaries of charities. Charitable incorporated organisations (CIOs), Royal Charter bodies and statutory corporations do not have to prepare a PSC Register, but if they have a trading subsidiary it will need to do so.

This guide is an introduction to the topic and a sign post for charities grappling with preparing their PSC Register. The new rules are complex and for many charities completing the PSC Register will require a detailed analysis of their circumstances against the relevant tests of control.

While the Department for Business Innovation & Skills (**BIS**) has issued [Guidance on the Register of People with Significant Control](#) (the **Guidance**) it (unfortunately) does not contain all the answers, and there are some uncertainties on the application of these rules at present. However, the Guidance sets out basic information on how to identify people with significant control (**PSCs**) and prepare the PSC Register.

What is a PSC Register?

It is a new statutory register that all UK companies must keep. The purpose of the register is to list individuals with significant control over the company and/or relevant legal entities (**RLEs**) with significant control. The new rules aim to increase the transparency of corporate structures and identify those able to exercise, or actually exercising, significant control.

When is this being introduced?

Companies must keep a PSC Register from 6 April 2016. After 30 June 2016, when a company completes a confirmation statement (which is replacing the Annual Return made to Companies House from June) it will need to provide PSC information, which will be publically available on the register of companies maintained at Companies House.

Who has 'significant control' under the new rules?

Only individuals can have significant control. There are five tests of 'significant control' and a person has significant control if they meet any one of the following conditions:

1. directly or indirectly holds more than 25% of the shares (this test will not apply to companies limited by guarantee and therefore will not be relevant to most charitable companies)

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2. directly or indirectly holds more than 25% of the member voting rights (note that where shares or rights are held jointly (e.g. trustees of trusts will hold shares jointly) each joint owner is treated as if they hold the total shares or voting rights held by all of them)
3. directly or indirectly holds the right to appoint or remove a majority of directors (who will of course be the charity trustees of a charitable company)
4. otherwise has the right to exercise, or actually exercises, significant influence or control
5. has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm which is not a legal entity, but would itself satisfy any of the first four conditions if it were an individual

The first three tests are likely to be relatively straightforward in most cases, given the reliance upon a largely a factual analysis.

The fourth and fifth tests of 'significant control'

The fourth and fifth tests are harder to apply given the inherent degree of subjectivity. [Draft Statutory Guidance from BIS on the meaning of "Significant Influence or Control"](#) that expands on how BIS interprets the fourth and fifth conditions helpfully provides some parameters in which to make this assessment and lists "excepted roles" where persons holding such roles will not usually be considered to have significant influence or control.

The fourth test

The fourth test is whether a person has the "*right to exercise, or actually exercises, significant influence or control.*"

The draft guidance indicates that this will include a person with the ability to take absolute decisions to appoint or remove the Chief Executive or to adopt or amend the business plan of a company (which might be said to include a charity's strategic plan in the absence of a business plan). However, rights of veto (for example over changing the Articles of Association) will be unlikely, on their own, to constitute "*significant influence or control*".

The guidance clarifies that exercising significant control is not limited to situations where a person may be considered a shadow director and would include: "*A person, who is not a member of the board of directors, but regularly or consistently directs or influences a significant section of the board, or is regularly consulted on board decisions and whose views influence decisions made by the board.*"

It may be open to question whether a charity's chief executive could fall into this definition. While persons acting in the course of their employment are 'excepted roles' (i.e. hold roles that in themselves are not indicative of exercising significant control), the list of excepted roles does not prevent that person from being a PSC if "*the role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood.*"

Our view is that most charity chief executives will not be PSCs. However, when identifying PSCs, charities will need to look at their circumstances in the round to

stress-test the individuals who can or do exercise significant control over decision-making.

Alongside employees, other excepted roles include professional advisers and the directors of a company (e.g. the directors or charity trustees themselves). Individuals holding these roles will therefore not generally be PSCs unless the role "*differs in material respects or contains significantly different features from how the role or relationship is generally understood.*"

The fifth test

The fifth test relates to where a trust or firm would satisfy any one of the first four tests if it were an individual. Any individual holding the right to exercise, or actually exercising, significant influence or control over that trust or firm should be entered on the PSC Register.

This test is likely to be met by any person with the right to appoint or remove any of the trustees and the right to amend the trust deed.

Trustees of a trust that has significant control over a company may each qualify as PSCs under the fifth condition, although this is not entirely clear in either the Guidance or the draft Statutory Guidance. However, even where it is considered that trustees do not meet the fifth condition, they will almost certainly meet the first, second or third condition, as any shares or rights held jointly are treated as if these are held in their entirety by each joint-owner. Consequently, a joint-owner (such as a trustee) of shares or rights in a company that meets the first, second or third conditions will be a PSC.

What is a 'relevant legal entity' (RLE)?

The PSC Register should also include details of any RLE.

In most cases, a RLE will be another UK company that keeps its own PSC Register and is the parent entity or directly holds a majority of the voting rights in the company. For example, the RLE of a wholly-owned trading subsidiary of a UK charitable company would be the charitable parent.

What are the duties of the company directors / charity trustees to complete the PSC Register and how is information obtained on PSCs?

Company directors / charity trustees are required to take reasonable steps to identify any PSCs and RLEs.

Following identification of the PSCs (if any), those individuals should be contacted to confirm whether they meet one or more of the tests, and to obtain the information needed to be entered on the PSC Register (and individuals are under an obligation to respond).

Once the PSC information is collected it needs to be added to the PSC Register, which must be filed at Companies House when providing the confirmation statement (after 30 June 2016) and thereafter kept up to date.

Illustrative examples of the new rules:

Below are some worked examples of how the PSC Register may apply in four

scenarios involving charities and their trading subsidiaries. Please note that the tests of significant control are fact specific and each charity and trading subsidiary need to apply the tests to their own circumstances.

A charitable company limited by guarantee with five charity trustees who are also its only members (all with equal voting rights) and new trustees are appointed by the serving trustees

- The charity has five members, each of whom can exercise 20% of the voting rights. None of the members hold more than 25% of the voting rights and so the second condition isn't satisfied by any member
- The trustees have considered the other tests and have not identified any person who is a PSC

Having taken reasonable steps to identify PSCs and RLEs, the trustees have identified no PSCs or RLEs in relation to the charity. In accordance with the Guidance, the charity's PSC register should state:

"The company knows or has reasonable cause to believe that there is no registrable person or registrable legal entity in relation to the company."

Where the number of members of a charity hovers around four (and may therefore be three for limited periods), the charity will need to be aware that for any period where a member has more than 25% of the voting rights they will need to be entered on the PSC Register.

A charitable company limited by guarantee with three charity trustees who are also its only members (all with equal voting rights) and trustees are appointed by a separate charitable trust

- The charity has three members, each of whom can exercise 33.3% of the voting rights. All three members hold more than 25% of the voting rights and therefore each is a PSC by virtue of the second condition
- The charitable trust that appoints the trustees of the company satisfies the fifth condition. Applying the rules on joint ownership, the trustees of the charitable trust meet the third condition. Consequently, each of the trustees of the charitable trust is a PSC by virtue of the fifth condition
- The trustees have sought to identify whether there are other PSCs under the relevant tests and have identified no others

The PSC Register will need to list the three members and the trustees of the charitable trust that appoint the trustees. In addition to the PSC's name, date of birth, nationality, country of residence, service address and residential address, the register needs to set out:

- (i) the date the individual became a PSC in relation to the company;
- (ii) which of the five conditions for being a PSC the individual meets, with quantification of the interest where relevant (if an individual meets conditions 1, 2 or 3, it is not necessary also to consider whether they meet condition 4);

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and

- (iii) any restrictions on disclosing the PSC's information that are in place.

A trading subsidiary wholly owned by a charitable company

- 100% of the shares in the trading subsidiary are owned by a charitable company that maintains a PSC Register
- The directors have sought to identify whether there are other PSCs under the five tests and have not identified any PSC

The PSC Register will need to list the charitable company as a RLE and list its name, registered office address, legal form and the law by which it is governed and:

- (i) the date it became a registrable RLE in relation to the company; and
- (ii) which of the five conditions it meets (and if it meets conditions 1, 2 or 3, it is not necessary to consider whether it also meets condition 4) and a quantification of its interest.

A trading subsidiary wholly owned by a charitable incorporated organisation (CIO), Royal Charter body or statutory corporation

CIOs, Royal Charter bodies and statutory corporations are not required to keep a PSC Register. Consequently, they will not be RLEs in relation to their trading subsidiaries and the rules require the directors of the trading subsidiary to 'look through' their charitable parent to assess if any individuals are PSCs in relation to the trading subsidiary.

Where there are four or more charity trustees of the parent CIO, Royal Charter body or statutory corporation and membership (or rights akin to membership) are vested in those persons or in a wider group, it may be that no individuals meet any of the tests to be considered a PSC in relation to the trading subsidiary.

Where appointment rights or voting rights are held by a government, government department, local authority or local government body (whether in the UK or elsewhere), those bodies are treated as individuals for the purposes of the legislation. Consequently, those public bodies can be listed as PSCs without the need to identify any individual. The name, principal office, legal form of the entity and governing law and the control test it meets must be listed on the PSC Register.

However, the directors of a trading subsidiary will have to work through the five tests to assess if there are any individuals who may be PSC in relation to the company.

Practical steps

Steps that charitable companies and trading subsidiaries should consider include:

- Informing the charity trustees of the new requirements and their obligations to maintain a PSC Register
- Taking reasonable steps to identify the PSCs for the company and whether

there are any RLEs

- Notifying any PSCs and RLEs that they have been identified as such and confirm with them their information (Annex 5 to the Guidance provides pro forma notices to send to individuals)
- Preparing the PSC Register (in accordance with the Guidance)
- Putting in place procedures to ensure PSCs and RLEs are identified on an ongoing basis
- Considering whether there are any grounds for information on the PSC Register being withheld from the public register at Companies House (in which case you may wish to seek advice on preventing disclosure)

If you require further information on anything covered in this briefing please contact [Lizzie Jones \(elizabeth.jones@farrer.co.uk; +44 \(0\)203 375 7138\)](mailto:lizzie.jones@farrer.co.uk) or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Charities](#) page on our website.

Summary

The nature of these rules makes it difficult to prepare a PSC Register without a detailed review of the Guidance and a thorough analysis of the way control over a company can be and is exercised. Charitable companies and trading subsidiaries need not only to prepare a PSC Register but put in place the necessary processes for updating the Register when circumstances change. Where charities sit within corporate groups (particularly groups containing a mixture of UK companies and non-UK entities or entities not required to prepare a PSC Register), there may need to be some thinking at a group-wide level as to how PSCs and RLEs are identified and recorded on the PSC Register.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.
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