



new register of people with significant control - will your business be ready?

From 6 April 2016 all non-listed UK companies must comply with new rules to create a register of the people that have significant influence or control over them. These registers will be open to public inspection. The requirements are one of the key features of the Government's plan to achieve transparency in beneficial ownership of UK companies and are backed-up with criminal sanctions for non-compliance.

The purpose of this note is to provide you with an overview of the new PSC regime. It is not intended to be comprehensive and it is essential that professional advice is obtained if guidance is required on specific issues.

Key points

- From **6 April 2016** all non-listed UK incorporated companies and LLPs must set-up a new statutory register of people with significant influence or control over them (**PSCs**).
- Companies must make their PSC registers available for public inspection.
- Directors must take active steps to identify their PSCs, including sending out "information-seeking" notices.
- A company's PSC register must never be empty and must always be kept up-to-date.
- PSCs that fail to respond to information requests may have their share rights frozen.
- PSCs must volunteer-up information about their PSC status, when the company is in default.
- Companies and their officers that fail to comply with their PSC obligations risk committing **criminal offences**. **Criminal sanctions** may be imposed on PSCs too.
- From **30 June 2016** PSC information will be searchable at Companies House, as it must be included in both confirmation statements (new-style annual returns) and incorporation forms for new companies filed after that date.

By introducing the PSC disclosure regime, the UK aims to lead the way in tackling the problem of corporate opacity which is believed to facilitate illicit activity and lead to poor corporate behaviour. The Government's policy objective in implementing the new rules is, "to reduce crime and improve the business environment to facilitate economic growth through enhanced corporate transparency". According to Government estimates, some 3.4 million companies (and 59,000 LLPs) will be impacted by the PSC register measures, at an equivalent annual net cost to business of £85.9m.

Who is affected?

From **6 April 2016**, virtually all **UK incorporated companies** and **LLPs** will have to set up a new register in their statutory books which identify people with significant influence or control over them (**PSCs**). The new register will be similar to the registers of members or directors. Only companies with shares traded on the London Stock Exchange, AIM or ISDX (or certain overseas markets) are exempt, as they are subject to other regulatory ownership disclosure rules.

This means that not only will **wholly-owned subsidiaries** and **dormant companies** be caught by the new regime to create a PSC register, but so will **companies limited by guarantee** including **charities**, **community interest companies** and **unlimited companies**.

For the time being, other legal entities such as bodies corporate including Royal Charter corporations, limited partnerships and charitable incorporated organisations will NOT have to set up a PSC register. Nor will overseas entities operating in the UK, though they might be subject to similar requirements in their home country. But if these types of entities appear in the ownership structure of a UK company, then they might be called upon to respond to “information-seeking” notices.

What is clear is that the introduction of the PSC regime will result in the expenditure of time and money by many. Applying the new rules should be relatively straightforward if you are a small family-owned company or a traditionally-structured UK group, however if your business has a more complex ownership structure compliance may prove more problematic.

The Government has issued some lengthy guidance for companies and LLPs on their new PSC obligations (“**Guidance**”), which is available [here](#). The Guidance aims to explain the new law and is intended to help companies (and LLPs) comply with it, but at 87 pages it is not a quick read!

Important definitions

The legislation defines a PSC as being an individual who meets one or more of five “Conditions” in relation to a company. These tests are explained in more detail below, but include a **holding of over 25% of the shares or rights** in the company, or the **right to exercise significant influence or control** over it.

Where your company is owned or controlled by another **legal entity** as opposed to an individual, the details of that legal entity must be included on your PSC register if it is both (i) **relevant** and (ii) **registrable** in relation to your company.

Relevant legal entities (RLEs) – a legal entity is **relevant** if it is:

- o a body corporate or firm that is a legal person under the law by which it is governed; and
- o would be a PSC in relation to your company if it were an individual; and
- o it is subject to its own disclosure requirements, that is, it has to keep its own PSC register (or it is subject to certain other regulatory ownership disclosure rules).

Registrable RLEs - an RLE is **registrable** in relation to your company if it is the first RLE in your company’s ownership chain.

Note that governments, government departments, local authorities and certain international organisations are treated as individuals for the purposes of the PSC legislation, therefore they can be PSCs and must be included in a company's PSC register if they satisfy one or more of the five Conditions.

Who is a PSC? – the five Conditions

There are five tests (referred to in the legislation as “Conditions”) to determine whether someone is a PSC of a company.

A PSC is someone that (either alone or with others):

- owns more than 25% of the company's shares OR
- holds more than 25% of the company's voting rights OR
- can appoint or remove a majority of the board of directors OR
- exercises or has the right to exercise significant influence or control over the company OR
- exercises or has the right to exercise significant influence or control over the activities of a trust (of which the person is a trustee) or firm (of which the person is a member) and the trust or firm meets one or more of the preceding conditions.

Conditions 1 to 3

1. X holds, directly or indirectly, more than 25% of the company's shares

When calculating whether someone holds more than 25% of a company's shares, you must consider whether the holding amounts to more than 25% of the nominal value of the company's issued share capital, or if the company does not have a share capital, whether the holding gives the holder the right or rights to share in more than 25% of the capital or profits of that company.

Because charities set up as companies limited by guarantee must have articles of association which prevent any distribution of profits or capital to members, they will not have any PSCs that satisfy this condition.

2. X holds, directly or indirectly, more than 25% of the company's voting rights

“Voting rights” means:

- rights conferred on shareholders or members to vote at general meetings of the company on all or substantially all matters; or
- if the company does not have general meetings at which matters are decided by exercise of voting rights, the Condition is satisfied where X holds rights, equivalent to those of a person entitled to exercise voting rights in a company, to block changes to the overall policy of the company or to the terms of its constitution.

3. X holds the right, directly or indirectly, to appoint or remove a majority of the company's board of directors

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

Meaning of “indirectly”

Shares and rights in a company are only held indirectly if the entity directly above the company meets any of Conditions 1 to 3 AND each entity above it in the ownership chain holds a “**majority stake**” in the entity immediately below it in the ownership chain. Someone will hold a “**majority stake**” in an entity if:

- o it holds a majority of voting rights;
- o it is a member and has the right to appoint or remove a majority of its board of directors;
- o it is a member and controls alone (or pursuant to an agreement with other members) a majority of the voting rights; or
- o it has the right to exercise, or actually exercises, **dominant influence or control** over that entity.

Other ownership arrangements

The legislation includes a number of supplementary rules which apply when interpreting the PSC Conditions, these include:

Nominee structures – Where shares are held by a nominee on another’s behalf, the shares are treated as being held by that person, this means that that person – and not the nominee – must be entered on the PSC register where the Condition is met by the nominee.

Joint holdings – Shares or rights in a company may be held jointly by two or more people. In such cases, each person is treated as holding the shares or rights in their own right. So if Mr and Mrs Jones have a joint interest in 30% of the shares in a company, they will both be a registrable person by virtue of each holding 30% of its shares.

Joint arrangements – Shares or rights in a company may also be subject to “joint arrangements” between persons, where those persons agree to act jointly in respect of the shares or rights in question. In such cases, each person is treated as holding the combined shares or rights of both of them. For example, if Mr and Mrs Jones each hold 20% of the shares in a company and have made a joint arrangement, they will both be a registrable person in relation to the company by virtue of holding 40% of its shares.

A “joint arrangement” is an arrangement between the holders of shares or rights that they will exercise all or substantially all of their respective rights together, in a pre-determined way. It is a broad definition that includes any scheme, agreement or understanding, whether or not legally enforceable, and any convention, custom practice or any kind, provided that there is a degree of stability about it. The intention is to exclude one-off actions or decisions which would not equate to “significant control”.

Condition 4 – significant influence or control

4. X has the right to exercise, or actually exercises, significant influence or control over a company

The Government has published statutory guidance for companies on the meaning of significant influence or control (**SIOC Guidance**), which is available [here](#). The SIOC Guidance says it is not an exhaustive statement of what amounts to SIOC, but instead provides examples which would be indicative of whether a person falls within the scope of Condition 4. It also outlines some “safe harbours”, referred to in the SIOC Guidance as “excepted roles”, where people will be outside scope.

SIOC examples

The SIOC Guidance distinguishes between situations where a person has a “right” to exercise SIOC and where a person “actually” exercises SIOC.

Examples of situations that might constitute a “right” to exercise SIOC are where an individual has:

- absolute decision rights over decisions related to the running of the company’s business, such as adopting or amending its business plan;
- absolute veto rights over decisions related to the running of the company’s business, such as adopting or amending its business plan or making any additional borrowing from lenders, unless that veto right is to protect a minority interest; or
- absolute veto rights over the appointment of the majority of the company’s directors, being those directors who hold a majority of the voting rights at board meetings on all or substantially all matters.

The SIOC Guidance notes that if a person holds absolute veto rights in relation to certain fundamental matters in order to protect a minority interest in the company, such as veto rights relating to a change to the company’s constitution or dilution of shares or rights, then these veto rights are unlikely, on their own, to constitute significant influence or control over the company.

Examples of situations which would be indicative of a person “actually” exercising SIOC are:

- a director, who owns important assets or has key relationships that are important to the running of the company’s business, uses this additional power to influence the outcome of decisions related to the running of the business;
- a person, who is not on the board, regularly or consistently directs or influences a significant section of the board or is regularly consulted about board decisions and whose views influence those decisions, such as a shadow director; or
- a company founder, who no longer has a significant shareholding, but who makes recommendations to other shareholders on how to vote and whose recommendations are always, or almost always, followed.

Safe harbours / excepted roles

The SIOC Guidance specifies certain roles and relationships that would not, on their own, result in a person being considered to be exercising SIOC, but it points out that such a person could still be a person with significant influence over the company if their role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood or exercised.

Excepted roles include the following:

- a person who provides advice or direction in a professional capacity, such as a lawyer, accountant, management consultant, investment manager, tax adviser or financial adviser;
- a person engaged in a third-party commercial or financial agreement, such as a lender, supplier or customer;
- an employee acting in the course of his employment and as nominee for his employer, including an employee, director or CEO of a third party (such as a corporate director company) that has significant influence or control over the company; and
- a director of the company, including a managing director, sole director, non-executive director or executive director with a casting vote.

Condition 5 – significant influence or control – trusts, partnerships etc

5. (i) X has the right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm and (ii) the trustees of that trust or the members of that firm (which are not legal

persons under the law by which they are governed) meet any of the other specified Conditions (in their capacity as such) in relation to the company, or would do so if they were individuals

The SIOC Guidance provides examples which would be indicative of whether a person falls within the scope of Condition 5, as well as outlining some excepted roles, where people will be outside scope.

If a trust or a firm (which is not treated as being a legal person by the new legislation) has any interest in or controls your company, you must consider whether that trust or firm would have met any of Conditions 1 to 4, if it were an individual. If it does satisfy one or more of these Conditions then you have to consider whether there is an individual or legal entity who controls the activities of the trust or firm.

Examples in the SIOC Guidance of situations that might constitute a “right” to exercise SIOC over a trust or firm include where an individual has the right to:

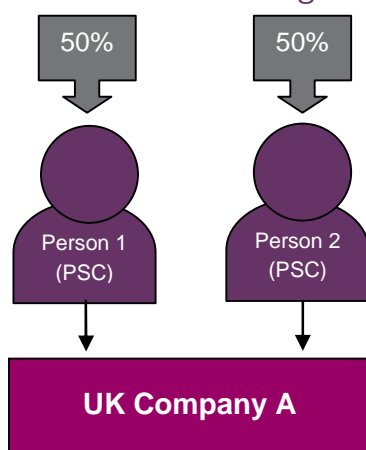
- appoint or remove any of the trustees or partners, except through application to the courts, or as a result of breach of fiduciary duty by the trustees;
- direct the distribution of funds or assets;
- direct investment decisions of the trust or firm;
- amend the trust or partnership deed; or
- revoke the trust or terminate the partnership.

The SIOC Guidance says that a person is likely to “actually” exercise significant influence or control over a trust or firm if they are regularly involved in the running of the trust or firm, for example a person who issues instructions, which are generally followed, as to the activities of the trust or firm to the trustee(s) or members of the firm. This may be a settlor or beneficiary who is actively involved in directing the activities of the trust.

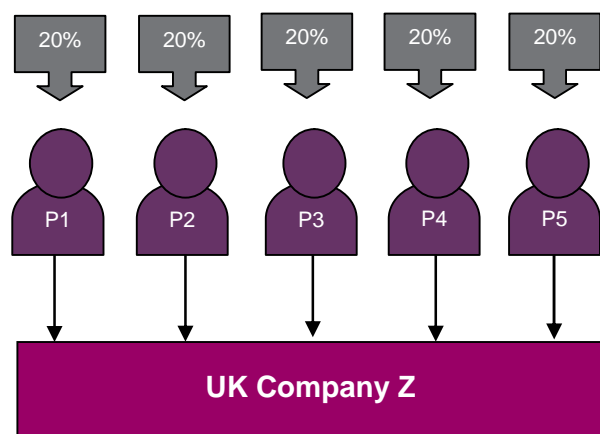
The “excepted roles” for trust and firm situations set out in the SIOC Guidance are very similar to the “excepted roles” for companies.

Some simple examples of satisfying the Conditions for being a PSC
(adapted from the Guidance)

When is an individual registrable?



Example 1

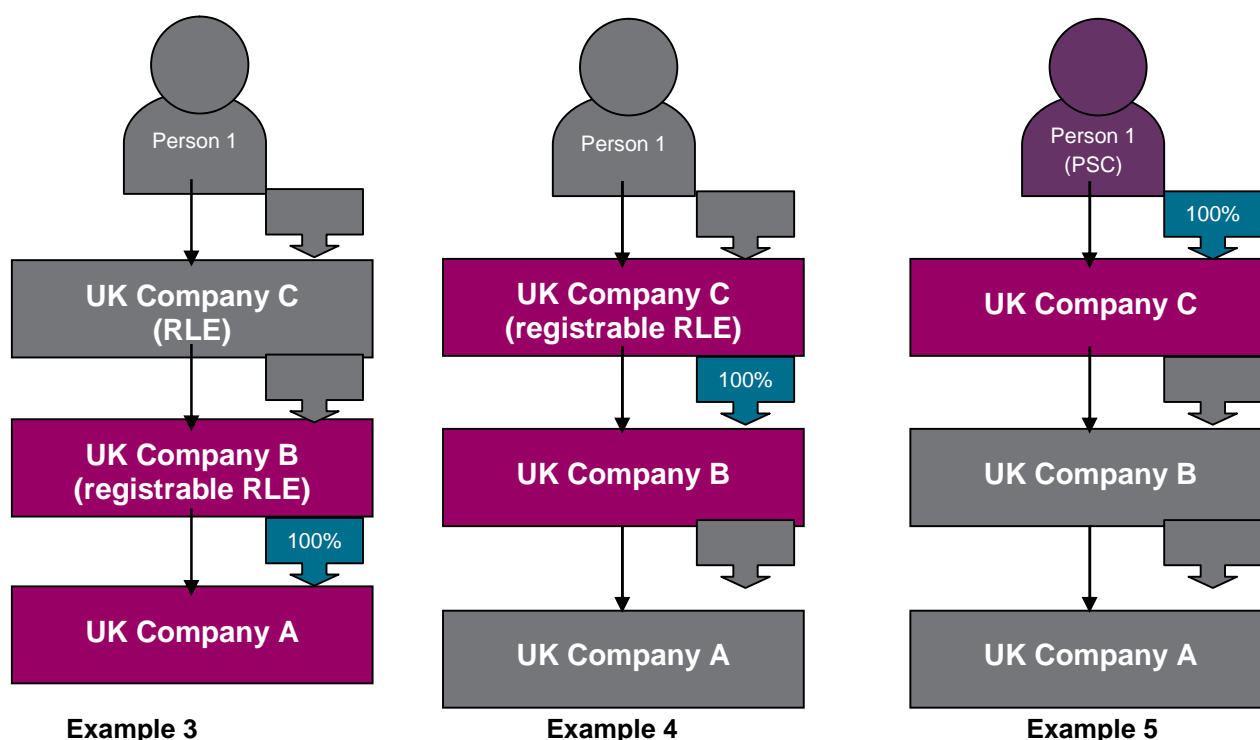


Example 2

Example 1 – Both Person 1 and Person 2 each hold 50% of Company A's shares. Each of those shares has one vote, so Person 1 and Person 2 also each hold 50% of the voting rights in Company A. Therefore Company A must enter both Person 1 and Person 2 as PSCs, meeting both Conditions 1 and 2 on its PSC register.

Example 2 - Assuming there are no joint arrangements between P1 to P5 to exercise their rights together, and none of them meets any of the other Conditions (such as exercising SIOC over Company Z), Company Z will have no PSCs because none of P1 to P5 hold enough shares/voting rights to satisfy Conditions 1 or 2 and it must enter that fact on its PSC register.

When is a RLE registrable?



Example 3 - Company B is the registrable RLE in relation to Company A and its details must be entered on Company A's PSC register. This is because Company B owns 100% of the shares in Company A and Company B is a UK company that must keep a PSC register. Company A does not have to look further up its chain of ownership for any indirect interests held via Company B, as these are not registrable in relation to Company A. Consequently Company C, which is also an RLE, and Person 1 do not need to be entered on Company A's PSC register.

Example 4 - Company C is a UK company and its details will be entered on Company B's PSC register. As the first RLE in Company B's chain of ownership, Company C is registrable in relation to Company B only. Person 1 does not need to go on Company B's PSC register even though he or she again holds an interest in Company B indirectly.

Example 5 - Person 1 is required to be entered on Company C's PSC register only.

What will you need to do?

Identify Confirm Enforce (if necessary) Monitor File

IDENTIFY

After creating your PSC register, you must take “**reasonable steps**” to investigate and identify whether there are any individuals or legal entities that meet the conditions for being a PSC or a registrable RLE in relation to your company.

The Guidance sets out some examples of the steps a company could typically take, including checking its register of members and reviewing its articles of association, any shareholders’ agreements, any other agreement between shareholders and any rights attaching to its shares. However it stresses that these suggestions are not exhaustive or definitive and there might be further actions that a company might take depending on its own circumstances.

The new legislation envisages that companies will need to send out “information-seeking” notices to relevant individuals that might be PSCs, to legal entities or to other people that might know the identity of the company’s PSCs. Examples of these notices are included in the Guidance.

CONFIRM

When you have identified an individual who is a PSC in relation to your company, you have all the relevant information about that individual’s required particulars (explained below) and he or she has “**confirmed**” that information, only then must the company go ahead and write up its PSC register in relation to that PSC. Information can be treated as confirmed if, for example, the PSC supplied it or it was provided with his or her knowledge.

In contrast, if you have identified a registrable RLE in relation to your company and you have all the relevant information you need about it to enter it on your PSC register, you may go ahead. Whilst information about a registrable RLE must be accurate, it does NOT need to be “**confirmed**”.

ENFORCE (IF NECESSARY)

Restrictions regime – freezing interests in shares/rights

If a company sends out information-seeking notices to suspected PSCs or registrable RLEs, but they fail to respond, then the company may impose **sanctions** on that persons’ shares/rights in an attempt to encourage them to reply and provide the information that the company needs to complete its PSC register.

Under the restrictions regime established by the legislation, the company must first issue a “warning notice” and then, if the person still fails to respond, a “restrictions notice”. The restrictions notice will effectively freeze the economic interest in the relevant shares/rights by prohibiting the holder from voting them or receiving any dividends on them and voiding any purported transfer of the interest.

The Government Guidance notes that applying restrictions is a significant step that can only be taken when a person has repeatedly failed to respond to the company’s requests for information. Whilst a company is NOT required by law to impose restrictions, the Guidance states that, “you must seriously consider it as part of meeting your legal requirements to take reasonable steps. If your company is in this situation and chooses not to impose restrictions, you should be able to justify your decision.”

MONITOR

A company must always keep its PSC register up-to-date. This might involve sending out more information-seeking notices, if it thinks that certain changes have occurred. Relevant changes would be if a person or entity ceases to be a PSC or registrable RLE or if information about them in the PSC register changes.

FILE

From **30 June 2016** onwards, a company's PSC information must be included in:

- o new-style annual returns (to be called "confirmation statements") sent to Companies House after that date; and
- o new-style incorporation forms (IN01s) on the incorporation of any new companies formed after that date.

Duties on PSCs and registrable RLEs

There are corresponding duties on individual PSCs and registrable RLEs to provide information about themselves and their PSC status, when the company is in default of its investigatory obligations. They must also volunteer-up information about changes in their required particulars (explained below) or if they cease to be a PSC or registrable RLE, if the company fails in its monitoring obligations.

What information must be included in your PSC register?

A company's PSC register must never be empty. It must contain information about:

- o the status of the company's investigation into its PSCs and registrable RLEs, using official wording;
- o "required particulars" of any PSCs and registrable RLEs, such as their name, address etc; and
- o details of the nature of any PSC's control over the company, that is, which of Conditions 1-5 applies, again using official wording.

Investigation status

If you are not in a position to enter details in your PSC register, because, for example, your investigations are still ongoing to determine whether your company has any PSCs or registrable RLEs, or the PSC information has not yet been "**confirmed**", then the relevant facts must be entered in your PSC register. The legislation sets out **official wording** that must be used.

So, for example, if on **6 April 2016** when the new rules come into force, you are taking reasonable steps to identify any PSCs, you must include the following statement in your PSC register:

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

The requirement to maintain a PSC register applies whether or not your company has any PSCs. If you have taken all reasonable steps and you are confident that there are no PSCs or registrable RLEs, then that fact must be entered on your PSC register, using the following official wording:

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

Required particulars

When you have identified your company's PSCs (and their details have been confirmed) or registrable RLEs and you are ready to write up the PSC register, the **required particulars** that must be recorded are as follows:

Registrable individual	Registrable relevant legal entity
Name	Corporate or firm name
Service address	Registered or principal office
Country of or state (or part of the UK) in which the person is usually resident	N/A
Nationality	Legal form of entity & governing law
Date of birth (day of birth not publically available at CH unless company has elected to keep its register solely at CH)	N/A
Usual residential address (not publically available but available to public authorities and credit reference agencies)	Registration number & details of register in which registered
Date he/she became a registrable person*	Date it became a registrable relevant legal entity*
Nature of his/her control over the company (which of 5 Conditions are met & quantification of interest)	Nature of its control over the company
Details of any restrictions on using or disclosing that individual's particulars	N/A

The date on which an individual or legal entity becomes a registrable person or RLE in relation to a company in existence when the new obligations come into force will be **6 April 2016.*

Nature of control

The legislation also sets out **official wording** that must be included in the PSC register about the nature of the control over the company. Where Conditions 1 and/or 2 apply concerning holding shares or voting rights in the company, there are three options to choose from:

- o holding more than 25% but not more than 50%
- o holding more than 50% but less than 75% or
- o holding 75% or more.

For instance, in **Example 1** above, the PSC register entries for both Person 1 and Person 2 in relation to the nature of their control would be:

“The person holds, directly or indirectly, more than 25% but not more than 50% of the shares in the company.

AND

“The person holds, directly or indirectly, more than 25% but not more than 50% of the voting rights in the company.”

What are the consequences of failing to comply with the new PSC obligations?

Criminal sanctions - companies

Companies and their officers that fail to comply with their new duties under the PSC regime risk committing **criminal offences**, punishable by a fine and/or up to two years imprisonment. The legislation sets out new offences that apply to companies that fail to:

- o set-up a PSC register;
- o take reasonable steps to identify their PSCs and obtain required information about them;
- o keep their PSC information up-to-date;
- o make the PSC register available for inspection at their registered office or SAIL; and
- o allow inspection and provide copies of PSC register, when required to do so.

Criminal sanctions – PSCs and registrable RLEs

PSCs or registrable RLEs that fail either to respond to a company's information-seeking notices, or, to volunteer-up information about their PSC status (when the company is in default), may also commit **criminal offences**. An offence may also be committed if the PSC knowingly or recklessly makes a false statement in purported compliance with a notice.

In addition, if a PSC or registrable RLE does certain things in contravention of or to circumvent the effect of a "restrictions notice" on his/ its shareholding or interest, such as attempting to dispose of his interest, voting his/its shares or appointing a proxy over them, this may also be a criminal offence.

The penalties for these offences vary, but offenders may be liable on conviction to a one or two year prison sentence and/or a fine.

Other sanctions – freezing interests in shares/rights

As mentioned above, if a company sends out information-seeking notices to suspected PSCs or registrable RLEs, but they fail to respond, then the company may impose **civil sanctions** on such persons by imposing restrictions that effectively freeze the economic interest in the shares/rights in question, for example, in relation to voting, transfer and the right to receive dividends.

Will a company's PSC information be publically available?

Yes, a company must keep its PSC register open for inspection by the public, without any charge, at its registered office (or its SAIL, that is, its single alternative inspection location), but the right of inspection will be subject to a "proper purpose" test.

Companies will have to provide a copy of their PSC register within five working days of a request, on payment of a fee of no more than £12. Furthermore they must inform the person inspecting and/or receiving copies of the PSC register of the most recent date of alterations and if any further alterations are due to be made.

In any event, as mentioned above, from **30 June 2016** onwards, a company's PSC information must be included in both confirmation statements and new-incorporation forms filed after that date.

Save where a successful protection application has been made (see below), only the usual residential address of an individual PSC and the day element of his or her date of birth will be hidden on the Companies House register.

The protection regime

A protection regime, similar to the existing regime for the protection of directors' residential addresses, is to be put in place for PSC's residential addresses. Together with the day element of the PSCs date of birth, this information will be hidden on the Companies House register.

Additionally, if an individual PSC considers that if as a result of their remaining PSC information being publically available at Companies House, they or someone they live with would be at serious risk of violence or intimidation due to the company's activities, then they can make an application to stop the information appearing on the public register. Protection will be granted only if the application contains evidence proving a serious risk or the individual already has protection as a company director or member of an LLP.

What steps can you start to take now?

- Review your current corporate structure including:
 - your register of shareholders / members
 - your articles of association / constitutional documents
 - any shareholders' agreement relating to your company
 - any other relevant documents
 - any rights attaching to shares or in relation to your company.
- Apply the statutory SIOC Guidance & the non-statutory Guidance for companies and LLPs.
- Create the new PSC register in your statutory books, ready to go live on **6 April 2016**.
- If necessary, prepare any "information-seeking" notices ready to be sent to relevant individuals, legal entities and other persons likely to have knowledge about your company's PSCs (but don't send them out yet!).
- On **6 April 2016**:
 - write-up your PSC register EITHER with the required particulars of all PSCs and registrable RLEs using the official wording (as long as the information is complete, and in the case of an individual PSC, it has been confirmed) OR with the "reasonable steps" official wording
 - ensure your PSC register is available for inspection at your registered office or SAIL
 - send out any "information-seeking" notices where you need more information.
- Thereafter, continue to update your PSC register with the status of your PSC investigations, using the official wording, and, if you have PSCs, their required particulars including their control, using the official wording.
- Continue to IDENTIFY, CONFIRM, UPDATE, and MONITOR your company's PSC information.
- From **30 June 2016** include PSC information in your confirmation statements FILED at Companies House.
- When in doubt seek advice!

How can Mills & Reeve help you?

With just a month to go before the new regime comes into force, non-exempt UK companies and LLPs should be preparing now, particularly where their ownership or control arrangements are complex. Bearing in mind the possible criminal sanctions, directors should consider taking legal advice on whether individuals might satisfy any of the tests for being a PSC in relation to their company or whether they have any registrable RLEs.

Similarly individuals and legal entities should also be considering whether they have any obligations under the new regime in relation to their holdings in or control over any UK companies or LLPs.

If you would like more information on how you and your company will be affected by the new PSC regime, please contact Tracey Atkins (tracey.atkins@mills-reeve.com or +(44)(0)1223 222486) or your usual Mills & Reeve contact.