



July 2017

## The PSC regime – a guide for private equity firms and their portfolio companies

Since 6 April 2016, unlisted UK companies and LLPs have been required to identify individuals who have significant interests in their shares, and publicly disclose their details in a "PSC Register". The regime was expanded in June 2017 to bring other entities within scope, including UK companies which are listed on AIM, Scottish limited partnerships and some Scottish general partnerships. Failure to comply carries criminal penalties.

The obligations under the PSC regime derive from the 2013 G8 agreement to make it harder to use corporate structures to hide criminal activity. The PSC Register provisions are not straightforward, and impose a considerable administrative burden on many companies, particularly corporate groups with complex ownership structures. Individuals with significant shareholdings also need to assess whether they have obligations to notify their interests.

On 26 June 2017, the relevant legislation was updated by the Information about People with Significant Control (Amendment) Regulations 2017 and the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (the "**2017 Regulations**"), to comply with the beneficial ownership register requirements of the EU Fourth Money Laundering Directive (MLD4). As noted above, the 2017 Regulations expanded the PSC regime to bring other entities within scope. For unlisted UK companies and LLPs, who were already required to comply with the PSC regime, the key changes made by the 2017 Regulations relate to the ongoing requirements to update and file PSC information with Companies House.

### Who is caught by the regime?

The PSC regime applies to all UK companies, other than UK companies which have voting shares admitted to trading on a regulated market in an EEA state (including the Official List of the London Stock Exchange) or certain other markets in the US, Japan, Switzerland or Israel. UK companies listed on markets such as AIM or the NEX Exchange Growth Market were also previously exempt. However, the 2017 Regulations removed this exemption, and since 24 July 2017 such companies have been required to maintain a PSC Register. It is important to note that the unlisted subsidiaries of exempt listed companies are not themselves exempt.

LLPs are also subject to the PSC regime via separate regulations, and the 2017 Regulations expanded the regime to cover additional types of entities, including Scottish limited partnerships and eligible Scottish general partnerships, being partnerships whose partners are all corporate bodies (together referred to in this note as

"ESPs")<sup>1</sup> and unregistered companies. Private equity firms with UK companies, LLPs and/or ESPs within their group, and their UK portfolio companies, will be affected by the 2017 changes to the PSC regime.

## Key obligations – at a glance

The table below outlines the key obligations under the PSC regime. Unlisted UK companies and LLPs should have been keeping a PSC Register since April 2016 (or from the date of their incorporation, if later) and should note the new updating and filing requirements introduced by the 2017 Regulations. Entities which are newly in-scope should also now be maintaining a PSC Register (with the exception of ESPs, who are not required to maintain their own register) and filing their PSC information with Companies House.

At a glance	
Obligations for companies, LLPs and ESPs	Obligations for shareholders
<ul style="list-style-type: none"><li>● Ascertain if the PSC requirements apply</li><li>● Take reasonable steps to identify PSCs</li><li>● Contact their PSCs, or those who may know them, to obtain/confirm PSC information</li><li>● Write up the PSC Register (if required)<sup>2</sup></li><li>● File initial PSC information at Companies House</li><li>● Keep PSC information in the PSC Register (if required) up to date</li><li>● File changes to their PSC information at Companies House within 14 days</li></ul>	<ul style="list-style-type: none"><li>● Ascertain whether they are a PSC/RLE (Relevant Legal Entity – see below) in relation to any UK company, LLP or ESP</li><li>● Respond to any requests for information in relation to their PSC/RLE status</li><li>● If no requests are received, report their PSC/RLE status to relevant entities</li><li>● Notify any changes to their PSC/RLE status</li></ul>

## Guidance

The Government has issued non-statutory [guidance for registered and unregistered companies, SEs and LLPs and ESPs](#) on their PSC obligations, and [separate guidance for PSCs](#) themselves. This is in addition to the statutory guidance for [companies](#), [LLPs](#) and [ESPs](#) on the concept of "significant influence or control" – see below.

## Who, or what, is a "PSC"?

A PSC is an individual who:

- holds, *directly or indirectly*, **more than 25%** of the shares in a company, or holds rights over more than 25% of the surplus assets of an LLP or ESP on a winding-up (**Condition 1**);
- holds, *directly or indirectly*, **more than 25%** of the voting rights in a company, an LLP or an ESP (**Condition 2**);
- holds, *directly or indirectly*, the right to appoint or remove a majority of the directors of a company or those involved in the management of an LLP or ESP (**Condition 3**);

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<sup>1</sup> While this note makes reference to ESPs and the application of the PSC regime to ESPs, we do not purport to give any advice on matters of Scottish law. ESPs are Scottish law governed entities and it may therefore be necessary to obtain specialist Scottish law advice if your PSC analysis involves ESPs.

<sup>2</sup> ESPs are not required to maintain a PSC Register. See "Maintaining PSC information" below.

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- has the right to exercise, or actually exercises, *significant influence or control* over the company, LLP or ESP (**Condition 4**); or
- has the right to exercise, or actually exercises, *significant influence or control* over a trust or partnership without legal personality, if that trust or partnership would satisfy one of the above conditions were it an individual (**Condition 5**).

The meaning of "*significant influence or control*" is clearly key to understanding the PSC definition, and is the subject of statutory guidance for companies, LLPs and ESPs. The statutory guidance gives examples of situations in which a person will be deemed to have the right to exercise, or actually exercise significant influence or control, and lists various safe harbours for directors, advisers and others (for more detail, see the box below entitled "Significant influence or control" - what does it mean?).

In some cases, the practical application of the examples given in the statutory guidance will be intuitive (for example, a founder with a retained minority stake who nonetheless continues to exert control because he or she owns IP assets or has relationships which are key to the business and whose recommendations are generally followed by the board). In other cases, however, it may be a matter of judgement as to whether a person has absolute decision rights over the policy or activities of the company, LLP or ESP which are sufficiently important to constitute "significant influence or control".

"Significant influence or control" – what does it mean?	
Examples	Safe harbours
<ul style="list-style-type: none"><li>• A person who can direct, or who has absolute veto rights over policies and activities in relation to, for example:<ul style="list-style-type: none"><li>- adopting or amending the business plan</li><li>- changing the nature of the business</li><li>- making additional borrowings, or</li><li>- the establishment of any employee or financial incentive arrangements.</li></ul></li><li>• A person who is not a director or a member of the management body (as the case may be) but is involved in or regularly consulted on the day-to-day management of the business and/or their recommendations are generally followed</li><li>• A person who owns important assets (e.g. IP rights) or relationships which are key to the business, and exploited by that person in order to influence the running of the business</li><li>• In the case of an LLP or ESP, a person who is more likely than not to receive more than 25% of its profits</li></ul>	<p>The statutory guidance states that certain roles and relationships would not normally<sup>3</sup> result in a PSC interest, including:</p> <ul style="list-style-type: none"><li>• professional advisers</li><li>• customers and suppliers</li><li>• lenders</li><li>• regulators/liquidators</li><li>• persons acting in the course of employment, including an employee of a third party who has significant influence or control over the relevant entity (this might apply to an investor director, for example)</li><li>• directors</li><li>• persons whose veto rights exist solely for the purpose of protecting minority interests</li><li>• prospective purchasers of the entity, holding rights temporarily pending completion of the purchase</li></ul>

## Indirect PSCs

Individuals can meet the PSC criteria by virtue of direct or indirect interests in the underlying entity. A person will be deemed to hold shares or rights in a company, LLP or ESP *indirectly* where the person holds a "*majority stake*" (see box – "Indirect PSCs – what is a "majority stake"?") in a legal entity and that legal entity holds the shares or rights in the underlying company, LLP or ESP either directly, or through a chain of legal

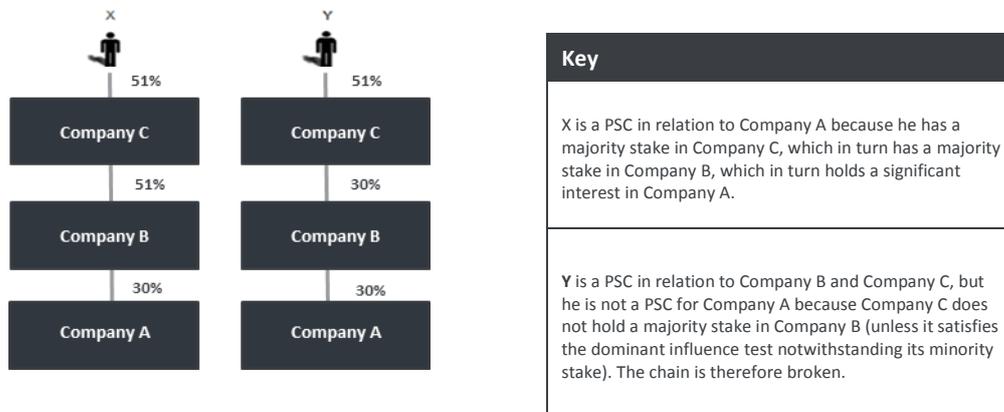
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<sup>3</sup> The safe harbours may not apply where any such role or relationship is performed in a materially "non-standard" way. For example, a director who owns key IP rights may use this as a means of exerting additional influence over a company, beyond the normal remit of a director, and might lose safe harbour protection as a result.

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entities, each of which holds a *majority stake* in the next one down, until you get to the entity holding the shares or rights in the underlying company. This is illustrated in Scenario 1 below.

## Scenario 1



This *majority stake* definition uses a higher control threshold than the PSC definition, and also differs from the beneficial owner definition in the Money Laundering Regulations 2007 (which applies the same >25% control test all the way up the chain).

However, it will be possible to satisfy the *majority stake* definition with less than a 50% voting stake if the shareholder in question exercises, or has the right to exercise, a dominant influence over the relevant company's affairs.

Indirect PSCs – what is a "majority stake"?
A person will hold a "majority stake" in a legal entity if he or she:
<ul style="list-style-type: none"><li>● holds a majority of the voting rights, or is a member and controls alone, pursuant to a shareholders agreement, a majority of the voting rights in the legal entity</li><li>● is a member and has the right to appoint or remove a majority of the board of directors of the legal entity</li><li>● exercises, or has the right to exercise a dominant influence or control over that entity</li></ul>

## Corporate holders / group companies – "Relevant Legal Entities" (or "RLEs")

A PSC is by definition an individual, but legal entities may also appear in the PSC Register if they are both "relevant" (i.e. they satisfy the criteria for a Relevant Legal Entity (or RLE)) and they are also "registrable" (see below). The concept of an RLE is key to understanding who appears in the PSC records of a particular company or LLP or ESP.

A legal entity will be a "Relevant Legal Entity" if:

- it is capable of satisfying one or more of the PSC Conditions; and
- either:
  - it is subject to the PSC regime; or
  - it has voting shares listed on a regulated market in an EEA State (including the Official List of the London Stock Exchange) or on certain markets in Israel, Japan, Switzerland or the US.

Typically, unlisted companies incorporated overseas will not be RLEs. Note, however, that the "majority stake" concept for indirect holdings relies on there being a chain of "legal entities", and this term includes both UK companies and overseas legal entities, whether or not they satisfy the RLE definition.

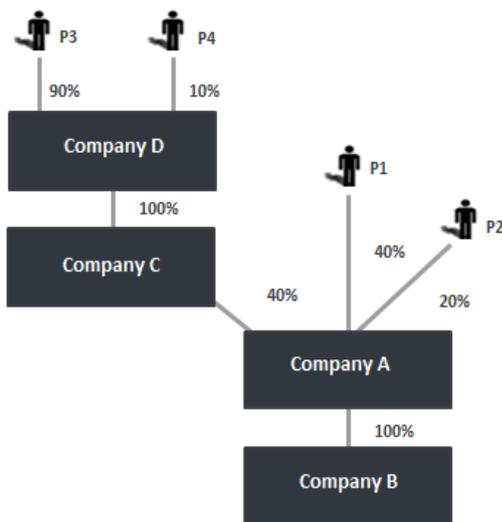
In scenario 1 above, Company B (assuming it is an unlisted UK company) will be an RLE in relation to Company A since it satisfies Condition 1 (and possibly also Conditions 2 and 3) and is required by the Companies Act 2006 to maintain its own PSC Register.

## Group companies – whose interest is registrable?

Having identified a PSC or RLE, either direct or indirect, you then need to consider if they are registrable in relation to a particular company, LLP or ESP. The Act distinguishes between "registrable" and "non-registrable" PSCs and RLEs in order to avoid multiple registrations.

So, where there is a chain of ownership and one or more of the entities in the chain are RLEs, only the first RLE in the chain above a company, LLP or ESP will be registrable in relation to it. Any RLEs further up the chain will not be registrable in relation to the underlying company, LLP or ESP. This is illustrated in Scenario 2 below.

### Scenario 2



Key	
Companies A, B and C are UK private companies, subject to the PSC regime. Company D is an unlisted overseas company.	
Company A	Only Company C (a registrable RLE) and P1 (a registrable PSC) need be shown on Company A's PSC Register. P2 is not a PSC. As Company C is an RLE registered in Company A's PSC Register, it is unnecessary to look further up the chain, so although P3 is a PSC of Company A, he is not registrable in relation to Company A, but should be traceable through Company C's own PSC Register.
Company B	Company A is a registrable RLE in relation to Company B, and will alone be noted as such in its PSC Register.
Company C	Company D is an unlisted overseas company and is therefore not an RLE. P3 is a PSC in relation to Company C and is registrable because he holds his shares indirectly through Company D which is not an RLE. P4 is not a PSC.
Company D	Overseas companies are not obliged to keep a PSC Register.

## Indirect PSCs – who is registrable in relation to the underlying company?

In Scenario 2 above, it was assumed that Company C was a UK company subject to the PSC regime, so it would be a registrable RLE for Company A. Therefore, although P3 is a PSC of Company A, he is not registrable for Company A as he holds his interest indirectly through a registrable RLE.

If *both* Company C and Company D were unlisted overseas companies, and therefore not RLEs, P3 would become a registrable PSC for Company A on a look-through basis because he holds a *majority stake* in Company D, which in turn holds a *majority stake* in Company C, which in turn owns a *significant interest* in Company A.

If the chain was broken because Company D held only 40% of the voting rights in Company C (i.e. not a majority stake) and did not otherwise exercise, or have the right to exercise, a dominant influence over

Company C, then P3 would cease to be a PSC for Company A. Whether or not P3 would then be identifiable via Company C or Company D would depend on the transparency rules applicable in the territories in which Companies C and D were incorporated.

EU territories may end up with similar regimes once they have implemented the beneficial owner register requirements of MLD4, which had an implementation deadline of 26 June 2017. Non-EU territories may have different transparency regimes.

## Limited Partnerships

If shares or rights in a portfolio company are held by a nominee company on behalf of an English limited partnership (an "ELP"), you should treat them as if they were held by that ELP. However, in most cases an ELP itself will not be capable of being an RLE in relation to an underlying portfolio company<sup>4</sup>.

Due to an exemption for limited partners, a limited partner will not satisfy any of Conditions 1 to 3 solely by virtue of an interest that it holds as a limited partner in an ELP. In the ordinary course, it would therefore be unlikely for a limited partner to be a PSC or an RLE of an underlying portfolio company. This analysis also applies to limited partnerships established in other jurisdictions (other than ESPs), whether or not they have legal personality.

The UK general partner and/or manager of an ELP will usually be registrable as an RLE of any UK portfolio company or LLP in which the LP holds a 25%+ stake. A non-UK general partner and/or manager will not be registrable, but you will need to look above the general partner and/or manager to establish whether there are any RLEs or PSCs further up the ownership chain.

## ESPs

Where there are ESPs in an investment structure (for example, where used as carried interest vehicles), the PSC analysis carried out by private equity firms prior to 26 June 2017 should have been reassessed in the light of the 2017 Regulations, and PSC Registers and filings should have been updated as necessary.

In most existing structures, where an ESP sits above a company or LLP, it is simply a case of replacing the existing PSC/RLE in the register with the ESP, as the ESP itself is now capable of being a registrable RLE. The ESP will also need to file its own PSC information at Companies House, meaning that it will need to take steps to identify its own PSCs/RLEs (whether direct or indirect), the criteria for which are outlined above. For a Scottish limited partnership, it is likely that a UK general partner and/or manager will be a registrable RLE. The limited partners in the Scottish limited Partnership are unlikely to be PSCs/RLEs due to the exemption for limited partners described above, which also applies to limited partners of Scottish limited Partnerships, notwithstanding that a Scottish limited partnership has legal personality.

## Investment professionals

In many cases, no single individual connected with the private equity firm will have significant control over the firm or its portfolio companies. However, appropriate analysis will need to be undertaken with regard to the statutory guidance. This is ultimately a matter of fact.

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<sup>4</sup> A limited partnership with legal personality that has 'voting shares' (or their equivalent) admitted to trading on one of the specified stock exchanges could be an RLE.

## Duty to identify PSCs / RLEs

Companies, LLPs and ESPs must take "reasonable steps" (see box – "What does "reasonable steps" mean?") to find out who has relevant interests in their shares, by serving notice on anyone they know or have reasonable cause to believe is a registrable PSC or RLE in relation to the company, LLP or ESP, asking them to confirm the nature of their interest (a "**PSC notice**"). Companies and LLPs refer to such notices as "section 790D notices", whereas ESPs under the Scottish partnerships regime will refer to "regulation 10 notices". The company, LLP or ESP can also make enquiries of anyone else it suspects may know the identity of a PSC or RLE.

Registrable PSCs and RLEs themselves will have a parallel obligation to notify the relevant company, LLP or ESP of their interest within one month of acquiring it if they have not, during that time, received a PSC notice from the company, LLP or ESP. They must also update the company, LLP or ESP if the nature of their interest changes.

What does "reasonable steps" mean?		
	Condition	Steps
i	Directly or indirectly owning more than 25% of the company's shares by nominal value, or holding rights over more than 25% of the surplus assets of an LLP or ESP on a winding up	For a company - review members' registers, articles of association, statements of capital. For an LLP or ESP – review the LLP/ESP agreement and any other relevant agreement.
ii	Directly or indirectly holding more than 25% of the voting rights in the company, LLP or ESP	For a company - review members' registers, articles of association, statements of capital, shareholders' agreements. For an LLP or ESP /– review the LLP/ESP agreement and any other relevant agreement. Consider voting patterns suggesting parties acting together (who may be considered to have a " <b>joint arrangement</b> " <sup>5</sup> )
iii	Directly or indirectly holding the right to appoint or remove the majority of the directors of the company, or a majority of those involved in the management of the LLP or ESP	For a company - review articles of association and any shareholders' agreements or covenants concerning the appointment or removal of directors holding the majority of votes at board level. For an LLP or ESP – review the LLP/ESP agreement and any other relevant agreement.
iv	Otherwise having the right to exercise, or actually exercising, significant influence or control	Consider statutory guidance and establish if anyone meets the suggested criteria, irrespective of any formal role or appointment
v	Holding the right to exercise, or actually exercising, significant influence or control over the activities of a trust or partnership without legal personality, which would otherwise satisfy any of the above conditions	Consider statutory guidance as above

## Maintaining PSC information

When a new company, LLP or ESP is first registered, it must file a "statement of initial significant control" at Companies House. As noted above, companies and LLPs are also required to maintain their own PSC Register<sup>6</sup>, which must be written up within 14 days after the relevant information has been confirmed by the

<sup>5</sup> Where shares are deemed subject to a "joint arrangement", each party to the arrangement is treated as holding the shares held by all parties to the joint arrangement combined. "Joint arrangement" is defined as an arrangement between holders of shares or rights that they will exercise all or substantially all their rights jointly in a way that is pre-determined by the arrangement.

<sup>6</sup> Private companies and LLPs have the power to opt out of the requirement to keep statutory registers at their registered office, relying instead on the central register at Companies House. If a company or an LLP has elected to dispense with keeping its own registers, it must file all changes directly at Companies House not later than the date on which it would otherwise have had to update its own register.

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relevant PSC (or in the case of an RLE, within 14 days of the company or LLP having all the relevant details – RLEs are not required to confirm their details).

Previously, companies and LLPs were required to keep their own PSC Register up to date, but PSC information only had to be filed at Companies House upon incorporation and then with each annual confirmation statement. Under the 2017 Regulations, any changes must be filed with Companies House within 14 days after a company or LLP updates its own register. If, prior to 26 June 2017, a company or LLP had recorded change(s) in its PSC Register which had not been filed at Companies House (for example, where such change(s) had occurred since the date of its last annual confirmation statement) the 2017 Regulations gave such a company or LLP 14 days from 26 June 2017 to file details of that change.

As noted previously, ESPs are not required to maintain their own PSC Register (reflecting the fact that there is no general legal requirement for partnerships to keep statutory books). Instead, they must register their PSC information at Companies House, and must update the information within 14 days of the change being confirmed by the relevant PSC (or in the case of RLEs, 14 days from when the ESP has all relevant details). In order to file PSC information at Companies House, ESPs first need to be registered with Companies House. Scottish limited partnerships will already be registered as registration is a pre-condition of becoming a limited partnership, but this is a new requirement for other ESPs. All other ESPs have 14 days from becoming Scottish qualifying partnership or 14 days from 24 July 2017 if already in existence, to register with Companies House.

For those seeking PSC information on a company or an LLP, the company or LLP's own PSC Register will usually be more up to date than the version at Companies House. If the company or LLP does not keep its own PSC Register, the Companies House version should be up to date, but in either case, the company or LLP can be asked to confirm whether any entries are pending. The RLE concept also means that it may be necessary to inspect the PSC information of several different companies/LLPs/ESPs in order to identify the ultimate owner(s) of a company, LLP or ESP in the chain of ownership.

## Content of the PSC Register and the Protection Regime

The Register of People with Significant Control Regulations 2016 (as amended) prescribe the scope of the disclosures required to be made in the PSC Register of companies and LLPs (see below). They also set out a protection regime, whereby the residential address of all PSCs will be kept by the company, LLP or ESP, but will not be disclosed to the public except to specified public authorities and credit reference agencies. Individuals who can establish that they are at serious risk of violence or intimidation can apply to Companies House to prevent their PSC information appearing on the public register.

A PSC Register must never be blank, so companies and LLPs with no PSCs must note that fact in their PSC Register, and where a company or LLP is aware that the PSC Register is incomplete, because for example it is still investigating its PSCs, it must note the status of its investigations into its PSCs. This information must also be filed with Companies House within 14 days of it being entered into the PSC Register. Similarly, ESPs (who are not required to maintain a PSC Register) must ensure that an appropriate statement is filed with Companies House.

Content of the PSC Register	
PSC Information	RLE Information
● full name	● name
● service address/usual residential address	● registered/principal office address
● country/state of residence	● legal form and governing law
● nationality	● registration number and place of registration
● date of birth	● date on which RLE became registrable
● date on which PSC became registrable	● nature and extent of control

<ul style="list-style-type: none"><li>● nature and extent of control<sup>7</sup></li></ul>	
<b>Status of investigations</b>	
The PSC Register must never be empty. The non-statutory guidance has standard wording (Annex 2) for entering details of the status of investigations into the company or LLP's PSCs/RLEs covering restrictions where the company or LLP has:	
<ul style="list-style-type: none"><li>● no registrable PSCs or RLEs</li><li>● unidentified registrable PSCs/RLEs</li><li>● identified a registrable PSC but has not confirmed their particulars</li><li>● not yet completed reasonable steps to identify registrable PSCs/ RLEs</li></ul>	

## Sanctions for non-compliance

**Failure to provide information on PSC/RLE interests** – a recipient of a PSC notice will normally have one month to respond to it. Failure to do so may result in the relevant shares being restricted, so that all voting, dividend and other share rights would be suspended and no transfers would be permissible without a court order. Failure to provide information is also a criminal offence punishable with 2 years' imprisonment or a fine or both. The effects of a "restrictions notice" are set out in the statute so can be triggered without an express provision in the company's articles. The interests of third parties who may be prejudiced by the restrictions (e.g. the legal owners or holders of security interests) must be taken into account, however, and an aggrieved third party has the right to apply to court to have the restrictions lifted.

**Provision of false information on PSC/RLE interests** – anyone who provides false information on PSC/RLE interests commits a criminal offence, punishable with up to 2 years' imprisonment or a fine or both. Where the offence is committed by a company, the directors will also be criminally liable.

**Failure to maintain a PSC Register or refusal of a request to inspect the Register** – a criminal offence is committed by the company and its directors, or LLP and its designated members, punishable by a fine. ESPs are not required to maintain their own PSC register.

**Failure to take reasonable steps to identify PSCs or send notices to PSCs/RLEs with regard to changes** – this is a criminal offence, punishable by 2 years' imprisonment or a fine or both.

**Failure to file changes at Companies House** – this is a criminal offence, punishable by a fine.

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<sup>7</sup> If a PSC/RLE satisfies more than one of Conditions 1, 2 or 3, the PSC Register must note each relevant Condition satisfied and the manner in which it is so satisfied. It is only necessary to consider whether a person or entity satisfies Condition 4, and to note that fact in the PSC Register, if that person or entity does not satisfy any of Conditions 1, 2 or 3. If a person has both a direct and indirect interest in the same company, both will be taken into account and must be disclosed.

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