

The European Fourth Anti-Money Laundering Directive: Amendments to the UK's Persons with Significant Control Regime

July 3, 2017

Key takeaways:

- A number of changes to the requirement for UK incorporated companies and certain other legal entities to maintain publicly accessible registers of persons with significant control (the “**PSC Regime**”) came into force on June 26, 2017. These have been made as a result of the requirements of the European Fourth Anti-Money Laundering Directive (the “**4MLD**”).
- Companies with shares admitted to trading on “prescribed markets” (including AIM and NEX Exchange Growth Market (formerly ISDX)) are no longer exempt from the PSC Regime. Affected companies have until July 24, 2017 to ensure that they have complied with the PSC Regime.
- Companies are now required to update their PSC registers and file particulars with Companies House as and when changes occur, rather than annually as part of its confirmation statement.

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The full text of the PSC Amendment Regulations can be accessed via this link:

<http://www.legislation.gov.uk/uk/si/2017/693/contents/made>

The UK Government had indicated its intention to introduce amendments to the PSC Regime in a consultation paper published in November 2016 and a call for evidence published in April 2017¹, in order for the UK to comply with its corporate transparency obligations under Article 30 of the 4MLD.

On June 23, 2017, the Information about People with Significant Control (Amendment) Regulations 2017 (the “**PSC Amendment Regulations**”) were published, and came into force on June 26, 2017. The PSC Amendment Regulations largely reflect the proposals set out in the consultation paper and primarily amend Parts 21A and 24 of the Companies Act 2006, and the Register of People with Significant Control Regulations 2016.

¹ BEIS, “Implementation of the Fourth Money Laundering Directive”, November 2016:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565095/beis-16-38-4th-money-laundering-directive-transposition-discussion-paper.pdf; and BEIS, “Call for evidence on a register showing who owns and controls overseas legal entities that own UK property or participate in UK government procurement”, April 2017:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/606611/beneficial-ownership-register-call-evidence.pdf.



Background to implementation of the 4MLD

The UK government has consistently expressed its desire to be at the forefront of increasing corporate transparency and, to this end, had already legislated to make information about the beneficial ownership of UK incorporated companies and other legal entities publicly available in the form of the PSC Regime. While the PSC Regime complied with the large majority of the requirements set out in the 4MLD, the UK government acknowledged that specific adjustments would be required to ensure full compliance with the 4MLD. For so long as the UK remains a member of the European Union, at least, the UK will continue to ensure that the PSC Regime is aligned with the requirements of the 4MLD.

Article 30 of the 4MLD is the key corporate transparency provision in the 4MLD, and requires all companies incorporated in the EU to provide information about their beneficial owners to their respective member states, with the intention that each member state will hold its own centralised register of beneficial ownership information. Such information is required to be “adequate, accurate and current”² and to be made available to specific authorities and organisations across the EU.

Other regulations transposing other provisions of the 4MLD also came into effect on June 26, 2017, including the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (the “**Scottish Regulations**”).

Key changes introduced by the PSC Amendment Regulations

Scope of the PSC Regime:

The PSC Amendment Regulations widen the scope of companies that are required to comply with the PSC Regime.

² Directive (EU) 2015/849, Recital 14.

The previous exemption for DTR5 issuers³, which included both issuers with voting shares admitted to trading on a “regulated market” as well as on a “prescribed market”, has been amended such that only companies with voting shares admitted to trading on a “regulated market” within an EEA State will now be exempt. The key consequence of this change is that companies with shares admitted to trading on a prescribed market (e.g. AIM, NEX Exchange Growth Market (formerly ISDX)) are no longer exempt from the PSC Regime, regardless of whether they are subject to DTR5.

Similarly, the ability for the Secretary of State to exempt companies that are bound by disclosure and transparency rules “*broadly similar to the ones applying to DTR5 issuers*” has been amended to exempt companies that are bound by disclosure and transparency rules “*which are contained in international standards*” and are equivalent to those applicable to companies with shares admitted to trading on a regulated market.

The list of markets specified by the Secretary of State in Schedule 1 to The Register of People with Significant Control Regulations 2016 (which are certain markets in Israel, Japan, Switzerland and the USA) has not been amended, but it remains to be seen whether it will be revised in light of this amendment.

The Scottish Regulations bring Scottish limited partnerships and certain Scottish general partnerships within the scope of the PSC Regime from July 24, 2017. BEIS has issued statutory guidance regarding the changes for those Scottish partnerships that now need to file PSC particulars⁴.

³ ‘DTR5 issuers’ refers to issuers subject to Chapter 5 of the FCA’s Disclosure Guidance and Transparency Rules sourcebook (*Vote Holder and Issuer Notification Rules*), being issuers with voting shares admitted to trading on a regulated market or on a prescribed market.

⁴ BEIS, “*Guidance on the meaning of “significant influence or control” over eligible Scottish partnerships in the context of the register of people with significant control*”, June 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/621569/170622_Eligible_Scot_P_GUI_June_2017.pdf

All amendments made by the PSC Amendment Regulations have been applied to the PSC legislation governing UK LLPs, and the PSC Amendment Regulations also impose the PSC Regime on unregistered companies from July 24, 2017.

Definitions of “voting shares” and “voting rights”:

In light of the amendment made to the DTR5 exemption described above, definitions of “voting shares” and “voting rights” have been included in Part 21A of the Companies Act 2006, and mean, respectively, (i) shares carrying voting rights, and (ii) rights to vote at general meetings of the relevant company (including rights that arise only in certain circumstances).

Requirement to update particulars:

Given the requirement under Article 30 of the 4MLD for information on PSC registers to be “adequate, accurate and current”, the PSC Amendment Regulations impose new deadlines on companies and legal entities to update PSC registers and file updated information at Companies House, where PSC particulars have changed.

In particular, companies and legal entities subject to the PSC Regime are now required to:

- Give notice to a PSC if the company or legal entity knows, or has reasonable cause to believe, that a relevant change to that PSC’s particulars has occurred, within 14 days of becoming aware of the change.
- Enter the required particulars of any PSC in the PSC register within 14 days of all of the required particulars being confirmed.
- Upon becoming aware of a change of PSC particulars, enter the change in the PSC register and the date on which the relevant change occurred within 14 days of the change and the date on which the change occurred being confirmed to the company or legal entity.

Companies and legal entities then have an additional 14 days from recording any changes in its PSC register in which to notify Companies House of any changes.

Disclosure of secured information:

The PSC Amendment Regulations provide for the disclosure of secured information to a credit institution or a financial institution, provided that appropriate procedures are followed.

Transitional arrangements

The PSC Amendment Regulations contain the following transitional arrangements:

- Where a company has come within the scope of the PSC Regime by virtue of the change to the exemption for DTR5 issuers, it has until **July 24, 2017** to comply with its obligations under the PSC Regime.
- Where a company’s or legal entity’s duties to keep information up-to-date and/or to keep a PSC register have not been complied with as at June 26, 2017 (in respect of its pre-June 26, 2017 position), it has 14 days from June 26, 2017, inclusive (*i.e.*, by **July 10, 2017**) to comply with those duties.
- Any changes to a company’s or legal entity’s PSC particulars, which occurred prior to June 26, 2017 and have not been notified to Companies House by delivery of the company’s or legal entity’s confirmation statement must be notified to the registrar within 14 days of June 26, 2017 inclusive (*i.e.*, by **July 10, 2017**).

Impact of the changes

Of the changes introduced by the PSC Amendment Regulations, the following are likely to have the greatest impact on companies and other legal entities subject to the PSC Regime:

1. The introduction of the 14-day period to notify Companies House of any changes to the PSC Register. Given that BEIS’s consultation paper had

suggested that notifications to Companies House would be reduced from annually to every six months to comply with the requirements of the 4MLD, the 14-day period that has been introduced is far shorter than many had expected. Companies are now going to have to move promptly upon becoming aware of changes to PSC particulars to meet the new deadlines.

2. The amendment to the previous DTR5 issuer exemption. This is likely to result, at least initially, in a significant administrative burden for issuers with voting shares admitted to trading on AIM and other prescribed markets, particularly in light of the short grace period. However, given that BEIS's consultation paper had suggested that this amendment would be introduced, and that such companies are likely to be in possession of much of the required information, many companies may already be prepared to satisfy their new obligations before the grace period expires.

Further updates

BEIS has produced updated statutory guidance on the meaning of "significant influence or control" to reflect the changes made to the exemption for DTR5 issuers and the implementation of the Scottish Regulations⁵. The draft statutory guidance is still before the UK Parliament. However, provided that no resolution not to approve the draft statutory guidance is passed during the period of 40 days from the guidance being laid before the UK Parliament, it will become effective in this published form.

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⁵ BEIS, "Draft statutory guidance on the meaning of "significant influence or control" over companies in the context of the register of persons with significant control", June 2017: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/621687/psc-statutory-guidance-companies.pdf