



Department for
Business, Energy
& Industrial Strategy

**GUIDANCE ON THE MEANING OF “SIGNIFICANT INFLUENCE
OR CONTROL” OVER ELIGIBLE SCOTTISH PARTNERSHIPS
IN THE CONTEXT OF THE REGISTER OF PEOPLE WITH
SIGNIFICANT CONTROL**



Guidance issued June 2017

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1. Introduction

What is in this guidance?

- 1.1. This guidance is about the meaning of the term “significant influence or control” in relation to eligible Scottish partnerships.
- 1.2. This guidance is issued with effect from 26 June 2017 which is when the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (S.I. 2017/694) (referred to in this guidance as “the Regulations”) come into force.
- 1.3. An eligible Scottish partnership is –
 - (a) a limited partnership registered in Scotland under the Limited Partnership Act 1907 (a “Scottish limited partnership” (SLP)), or
 - (b) a general partnership which is constituted under the law of Scotland, for any period in which it is a qualifying partnership under regulation 3 of the Partnership (Accounts) Regulations 2008 (S.I. 2008/569) (a “Scottish qualifying partnership” (SQP)).
- 1.4. Eligible Scottish partnerships are required to file information about the people with significant control over the eligible Scottish partnership with the Companies House.
- 1.5. A person has significant control over an eligible Scottish partnership if one or more of the specified conditions are satisfied. The first three specified conditions concern the rights to more than 25% of the surplus assets on a winding up, holding more than 25% of the voting rights, and the right to appoint or remove the majority of management.
- 1.6. The fourth and fifth specified conditions require a person to exercise or have the right to exercise “significant influence or control” either over the eligible Scottish partnership itself or over the activities of a trust or a firm which meets any of the other specified conditions in relation to the eligible Scottish partnership.
- 1.7. If a person has significant control over an eligible Scottish partnership by meeting one or more of the first three specified conditions it is unnecessary to inform the registrar, if that person also has significant influence or control by virtue of the fourth condition.

- 1.8. The term “significant influence or control” occurs five times in Schedule 1 of the Regulations.
- 1.9. The first two occurrences are in the fourth and fifth specified conditions and take the following form:

Significant influence or control

5. *The fourth condition is that X has the right to exercise, or actually exercises, **significant influence or control** over eligible Scottish partnership Y.*

Trusts, partnerships etc

6. *The fifth condition is that-*
- a) *The trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to eligible Scottish partnership Y, or would do so if they were individuals, and*
 - b) *X has the right to exercise, or actually exercises, **significant influence or control** over the activities of that trust or firm.*

- 1.10. The third and fourth occurrences are in paragraph 8 of Schedule 1 which determines whether a person holds an interest in an eligible Scottish partnership. The fifth occurrence is in paragraph 19 of Schedule 1 which requires that regard must be had to any guidance about the meaning of “significant influence or control” issued for the purpose of Schedule 1 by the Secretary of State.

How should this guidance be used?

- 1.11. Paragraph 19 of Schedule 1 of the Regulations 3 states that regard must be had to this guidance in interpreting references to “significant influence or control” in Schedule 1. Schedule 1 of the Regulations sets out the specified conditions which must be met for a person to be a PSC over an eligible Scottish partnership and the rules which should be applied when considering whether an individual meets the conditions for being a PSC.
- 1.12. Separate statutory guidance is available on the meaning of the term “significant influence or control” in the context of companies and Limited Liability Partnerships (LLPs).

- 1.13. This guidance does not provide an exhaustive statement of what constitutes “significant influence or control.” It provides a number of principles and examples which would be indicative of holding the right to or actually exercising significant influence or control over an eligible Scottish partnership, or the activities of a trust or firm which itself meets a specified condition in relation to the eligible Scottish partnership.
- 1.14. Parts 4 and 6 of this guidance also provide a non-exhaustive list of the kind of roles and relationships which a person may have with an eligible Scottish partnership, or in relation to the activities of a trust or firm which would not, on their own, result in that person being considered to have “significant influence or control”. These are referred to in this guidance as “excepted roles.”
- 1.15. However, it is possible that a person who has an excepted role might still, in the circumstances of a particular case, have the right to exercise, or actually exercise, significant influence or control over the eligible Scottish partnership, trust or firm. This could occur, for example, if the role or relationship contains elements which exceed the role or relationship as it is usually understood or exercised, or if the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.
- 1.16. This guidance is relevant when an eligible Scottish partnership, trust or firm, or a PSC carries out an assessment as to whether a person meets the fourth or fifth specified condition in relation to the eligible Scottish partnership. When applying this guidance careful consideration should be given to the facts of the particular case which will be very important in determining whether significant influence or control exist in any particular case.
- 1.17. This guidance is confined to the meaning of “significant influence or control” within Schedule 1 of the Regulations. Any consideration of the information about people with significant control in relation to the eligible Scottish partnership on the central register and of roles and responsibilities within an eligible Scottish partnership, trust or firm should be carried out within the context of the broader legal framework and the duties imposed by it.

Further guidance

- 1.18. Other guidance to the PSC framework has been issued and is published on www.gov.uk. The aim of the framework guidance is to explain the requirements of the PSC register. The framework guidance consists of:
- A summary guide for companies;

- Guidance for companies, eligible Scottish partnerships and LLPs; and
- Guidance for PSCs.

Significant influence or control – terminology

- 1.19. “Significant influence” and “control” are alternatives.
- 1.20. Where a person can direct the activities of an eligible Scottish partnership, trust or firm, this would be indicative of “control.”
- 1.21. Where a person can ensure that an eligible Scottish partnership, trust or firm generally adopts the activities which they desire, this would be indicative of “significant influence.”
- 1.22. The “control” or “significant influence” do not have to be exercised by a person with a view to gaining economic benefits from the policies or activities of the eligible Scottish partnership, trust or firm.

2. Right to exercise significant influence or control over an eligible Scottish partnership

- 2.1. The fourth and fifth specified conditions require a person to have the right to exercise or actually exercise significant influence or control.
- 2.2. In the context of an eligible Scottish partnership, a person may hold a right to exercise significant influence or control as a result of a variety of circumstances including through the partnership agreement or some other agreement, through rights attached to a financial interest, or otherwise. The person exercising significant influence or control might or might not be a partner of the eligible Scottish partnership.
- 2.3. The right to exercise significant influence or control is a right which, if exercised, would give rise to the actual exercise of significant influence or control.
- 2.4. The right to exercise significant influence or control over an eligible Scottish partnership may result in that person being a PSC in relation to the eligible Scottish partnership regardless of whether or not they actually exercise that right.

Examples

- 2.5. Paragraphs 2.6, 2.7, 2.8 and 2.10 set out a number of examples of what might constitute a right to exercise significant influence or control, while paragraph 2.9 and sets out a number of examples where rights relating to protection of a partner's own or a minority interest would not on their own constitute a right to exercise significant influence or control. The examples do not constitute an exhaustive list.
- 2.6. Where a person is likely (more likely than not) to receive more than 25% of the profits of an eligible Scottish partnership, including profits allocated automatically or otherwise.
- 2.7. Where a person has absolute decision rights over decisions related to the running of the business of the eligible Scottish partnership, for example relating to:
 - (a) Amending the eligible Scottish partnership agreement;

- (b) Adopting or amending the eligible Scottish partnership's business plan;
- (c) Changing the nature of the eligible Scottish partnership's business;
- (d) Making any additional borrowing from lenders; or
- (e) Establishing or amending any financial incentive scheme.

2.8. Where a person holds absolute veto rights over decisions related to the running of the business of the eligible Scottish partnership, for example relating to:

- (a) Amending the eligible Scottish partnership agreement;
- (b) Adopting or amending the eligible Scottish partnership's business plan; or
- (c) Making any additional borrowing from lenders (except as a minority protection as described in paragraph 2.9 below).

2.9. However, if a person holds absolute veto rights in relation to certain fundamental matters for the purposes of protecting their own or a minority interest then this is unlikely, on its own, to constitute "significant influence or control" over the eligible Scottish partnership. When used for the purposes of protecting minority interests these veto rights could include (or relate to) the following:

- (a) Changing the eligible Scottish partnership agreement;
- (b) Diluting rights including through the admission of new partners;
- (c) Diluting profit share or other financial interests including through the addition of new partners;
- (d) Requiring additional capital contributions;
- (e) Making any additional borrowing from lenders, outside previously agreed lending thresholds; or
- (f) Winding up the eligible Scottish partnership.

2.10. Where a person holds veto rights over the appointment of the majority of the persons entitled to take part in management of the eligible Scottish partnership, meaning those persons who hold a majority of the voting rights at meetings of the management body of the eligible Scottish partnership (whether those persons are or are not partners of the eligible Scottish partnership).

- 2.11. A person would not have “significant influence or control” where the absolute decision rights or veto derive solely from being a prospective purchaser or merger partner or demerger partner in relation to the eligible Scottish partnership (whether its business or assets), on a temporary basis, for example pending clearance by the Competition and Markets Authority.
- 2.12. In this guidance the term ‘absolute’ is used in relation to decision rights or a veto to mean that a person has the ability to make or veto a decision without reference to or collaboration with anyone else¹.

¹ Schedule 1 paragraph 11 (Joint interests and joint arrangements) continues to apply in these circumstances

3. Actually exercises significant influence or control over an eligible Scottish partnership

- 3.1. The following is a list of situations which would be indicative of a person actually exercising significant influence or control.
- 3.2. All relationships that a person has with the eligible Scottish partnership or other individuals who have responsibility for managing the eligible Scottish partnership should be taken into account, to identify whether the cumulative effect of those relationships places the person in a position where they actually exercise significant influence or control. For example:

A partner, who also owns important assets and has key relationships that are important to the running of the business (e.g. intellectual property rights), and uses this additional power to influence the outcome of decisions related to the running of the business of the eligible Scottish partnership.

Examples

- 3.3. A person would exercise “significant influence or control” if:
- (a) They are involved in the management and direction of the eligible Scottish partnership, for example:

A person, who is not a member of a management body, but regularly or consistently directs or influences a significant section of management, or is regularly consulted on management decisions and whose views influence decisions made by those involved in management.

- (b) Their recommendations are always or almost always followed by partners who hold the majority of the voting rights in the eligible Scottish partnership, when they are deciding how to vote. For example:

An eligible Scottish partnership’s founding partner who no longer has a formal interest in the eligible Scottish partnership they started, but makes recommendations to partners on how to vote and those recommendations are always or almost always followed.

4. Fourth condition: excepted roles with respect to eligible Scottish partnerships

- 4.1. The following is a non-exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising significant influence or control for the purposes of the fourth condition.
- 4.2. Where the person provides advice or direction in a professional capacity, for example, as:
 - (a) A Lawyer;
 - (b) An Accountant;
 - (c) A Management consultant;
 - (d) An Investment manager;
 - (e) A Tax advisor; or
 - (f) A Financial advisor.
- 4.3. Where the person deals with the eligible Scottish partnership under a third party commercial or financial agreement, for example, as:
 - (a) A Supplier;
 - (b) A Customer; or
 - (c) A Lender.
- 4.4. Where the person exercises a function under an enactment, for example:
 - (a) A Regulator; or
 - (b) A Liquidator or receiver.
- 4.5. Where the person is an employee acting in the course of their employment and nominee for their employer, including an employee, director or CEO of a third party (such as a corporate member company), which has significant influence or control over the eligible Scottish partnership.

- 4.6. A person who makes recommendations to partners on an issue, or set of issues, on a one off occasion, which is subject to a vote of the partners.
- 4.7. Any person or entity in relation to any association, professional standards organisation or network of companies or firms which promulgates common rules, policies or standards to be adopted by the members of the network, but does not otherwise have control of members of the network.
- 4.8. A person who has a role or relationship of the kind listed above with the eligible Scottish partnership may, however, be a person with significant influence over the eligible Scottish partnership either:
- (a) If the role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood; or
 - (b) If the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.

Example:

Extra-ordinary functions of a person could result in them being considered to have significant influence or control:

- A partner who also owns important assets or has key relationships that are important to the running of the business (e.g. intellectual property rights), and uses this additional power to influence the outcome of decisions related to the running of the business of the eligible Scottish partnership. This individual would not be excluded from being considered to exercise significant influence or control.

5. Trusts and firms

- 5.1. The fifth specified condition in Schedule 1 of the Regulations is relevant where a trust or firm meets any of the other specified conditions in relation to an eligible Scottish partnership:

6. *The fifth condition is that-*

- a) *The trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person meet any of the other specified conditions (in their capacity as such) in relation to eligible Scottish partnership Y, or would do so if they were individuals, and*
- b) *X has the right to exercise, or actually exercises, **significant influence or control** over the activities of that trust or firm.*

- 5.2. This condition is relevant where a trust or firm meets one of the specified conditions for being a PSC of an eligible Scottish partnership and a person (other than the trustees or members of the firm) has the right to exercise or actually exercises significant influence or control over the activities of the trust or firm.

Right to exercise influence or control – trust or firm

- 5.3. The right to exercise significant influence or control is a right which, if exercised, would give rise to the actual exercise of significant influence or control.
- 5.4. The right to exercise significant influence or control over the activities of a trust or firm may result in that person being a PSC in relation to the eligible Scottish partnership if that trust or firm would meet the conditions for being a PSC of the eligible Scottish partnership if they were an individual. This would be the case regardless of whether or not they actually exercise that right.
- 5.5. A person has the right to exercise “significant influence or control” over a trust or firm if that person has the right to direct or influence the running of the activities of the trust or firm, for example:
- (a) Right to appoint or remove any of the trustees, partners or members, except through application to the courts, or as a result of breach of fiduciary duty by the trustees;

- (b) Right to direct the distribution of funds or assets;
- (c) Right to direct investment decisions of the trust or firm;
- (d) Right to amend the trust or partnership deed; or
- (e) Right to revoke the trust or terminate the partnership.

Actually exercises influence or control – trust or firm

- 5.6. A person is likely to 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.

6. Fifth condition: excepted roles – trust or firm

- 6.1. The following is a non exhaustive list of roles and relationships which would not, on their own, result in that person being considered to be exercising significant influence or control for the purposes of the fifth condition.
- 6.2. Where the person provides advice or direction in a professional capacity, for example as:
 - (a) A Lawyer;
 - (b) An Accountant;
 - (c) A Management consultant;
 - (d) An Investment manager;
 - (e) A Tax advisor; or
 - (f) A Financial advisor.
- 6.3. Where the person is engaged in a third party commercial or financial agreement, for example, as:
 - (a) A Supplier;
 - (b) A Customer; or
 - (c) A Lender.
- 6.4. Where the person exercises a function under an enactment, for example, as:
 - (a) A Regulator; or
 - (b) A Liquidator or receiver.
- 6.5. Where the person is an employee acting in the course of their employment, including an employee or director of a third party, which has significant influence or control over the trust or firm.

- 6.6. Rights held by all or a group of employees, for the purpose of representing the employees interests in an employee-owned company or firm.
- 6.7. A person who has a role or relationship of the kind listed above in relation to the trust or firm may, however, be a person with significant influence over the trust or firm either:
 - (a) If the role or relationship differs in material respects or contains significantly different features from how the role or relationship is generally understood; or
 - (b) If the role or relationship forms one of several opportunities which that person has to exercise significant influence or control.

