



people with significant control – do you have any in your church?

July 2016



Stewardship Briefing Paper



This Briefing Paper and others like it are provided free of charge and help a great many churches and charities. Their development involves many hours of dedicated professional expertise both from within and outside of Stewardship. They are provided at our own cost as part of our mission to equip you.

If you find the material in this Briefing Paper to be of value, we would invite you to respond in the following ways:

- Subscribe to receive our email bulletins at our website, www.stewardship.org.uk; and
- Tell others in your church or charity about our resources.

If you regard the material to have been of particular help and significance to you in your work (for example using it to inform a church or charity group/network) perhaps you would consider making a financial gift to Stewardship in appreciation (though please feel under no obligation).

CONTACT DETAILS

Stewardship
1 Lamb's Passage, London EC1Y 8AB
t 020 8502 5600
e: enquiries@stewardship.org.uk
w: stewardship.org.uk

Stewardship is the operating name of Stewardship Services (UKET) Limited, a registered charity no. 234714, and a company limited by guarantee no. 90305, registered in England

© Copyright Stewardship 2016

COPYRIGHT

This publication is the copyright of Stewardship. We want our resources to have the maximum impact, therefore you are welcome to reproduce or otherwise distribute this material in whole or part. We simply ask two things: (1) there must be no use for commercial gain, and (2) Stewardship is clearly acknowledged with the following wording "Reproduced with permission from Stewardship. www.stewardship.org.uk". If extracts are to be used in another context, permission should be sought in advance by emailing enquiries@stewardship.org.uk or telephoning 020 8502 5600. Thank you.

DISCLAIMER

Whilst every care has been taken in the preparation of this material, Stewardship cannot be responsible for action taken or refrained from in reliance thereon. It is recommended that appropriate professional advice be sought in each relevant individual circumstance.

ACKNOWLEDGEMENT

Stewardship acknowledges with grateful thanks the assistance of Anthony Collins Solicitors <http://www.anthonycollins.com/> in writing this briefing paper.

introduction

If your church or charity is structured as a company (this does **not** include CIOs), then please read on because...with immediate effect (that is since April 2016), The Small Business, Enterprise and Employment Act 2015 requires you to keep a register of people with significant control (PSC) and from 30 June 2016 to send that register to Companies House (see later).

The aim of this additional disclosure is to make public the names of any individuals who are the main controllers of a company. Like so much legislation, this is not something that specifically targeted the charitable sector but as a Company Law requirement it does extend to include charitable companies.

How might this affect me?

Before the introduction of the Charitable Incorporated Organisation (CIO), a number of charitable organisations opted to be structured as companies (normally limited by guarantee). Whilst this provided some advantages, it also brought those charities under the requirements of the Company Law regime.

So for churches and other charities that are structured as companies, the PSC requirements apply in full. Churches and charities that have opted for the CIO structure will not be required to comply because CIOs are subject only to Charity law and not Company law.

Whilst in a church context the register does not really provide any helpful information, failure to comply is a criminal offence.

What makes a PSC?

A PSC is a person who meets at least one of the following five conditions. Three of which are quantifiable with the other two introducing an element of judgement:

Measurable conditions

- Owns more than 25% of the shares in a company;
- Holds more than 25% of the voting rights of a company;
- Has the right to appoint or remove a majority of the board of directors.

Conditions requiring judgement

- Has the right to exercise or actually exercises significant influence or control¹;
- Has the right to exercise or actually exercises significant influence or control¹ over a trust or firm which itself would be a PSC if it were an individual.

¹ Significant influence and control includes:

- Being significantly involved in the management and direction of the company;
- Having recommendations always or almost always followed by those who hold the majority of the voting rights in the company;



who might be a PSC in your church?

The measurable conditions

The conditions set out in the legislation for who are PSC apply at an individual level.² Currently, the concept of connected parties does not apply, but we consider this may be an area that evolves over time, as presently this appears to be an easy and straightforward way in which to get around the rules.

Firstly, and straightforwardly, a PSC will be any person that meets any of the three quantifiable conditions set out above. Meeting these conditions will be a matter of fact and in most cases should be simple to determine.

➔ Example 1

In a church structured as a company limited by guarantee with a trustee body of six people all having equal voting rights, each would have just over 16% of the voting rights therefore not meeting any of the measurable conditions. Unless either of the remaining two conditions is judged to have been met, none of the trustees would be considered to be a PSC.

Because it appears that the connected party concept does not apply, any relationships between the trustees are ignored for this purpose. If in the example above three of the trustees were from the same family so long as they do not meet either of the final two conditions none would be considered a PSC. We do expect more guidance to be provided on this area in the future.

Conditions requiring the exercise of judgement

Secondly, and perhaps not so straightforwardly, a PSC will be a person considered to meet either of the final two conditions set out above, those which require the application of a layer of judgement. In our view this will not capture the majority of churches even where the senior pastor proves to be quite persuasive and influential and gets his/her way more often than not. The very act of discussion, influence and persuasion in reaching a consensus is normally sufficient to ensure that any person is unlikely to be a PSC.

➔ Example 2

A church structured as a company limited by guarantee has a trustee body of 6 people including the senior pastor. That pastor has a clear idea of the direction in which he/she feels the church should head, and is quite persuasive in bringing the rest of the trustee board along. Whilst the church may end up following many or even most of the pastor's leads, the fact that they have been discussed at trustee level and were open to challenge is sufficient to ensure that the pastor is **unlikely** to be considered to be a PSC.

² Companies can also be considered PSC, but this is very unlikely in a church context so is not considered further.

However, in churches where the senior pastor is a dominant figure expecting, and in practice seeing, the church fall-in-line with all of his recommendations then the pastor is **likely** to be considered a PSC, even in cases where they do not meet any of the quantifiable conditions.

Example 3

A church structured as a company limited by guarantee has a trustee body of 6 people which includes the senior pastor. The church considers its leader to be an apostolic appointment allowing that person free reign in determining the policies and contractual outcomes of the church. In this case, the pastor is **likely** to be a PSC even though they are unable to control more than 25% of the voting rights.

Please note that this would be true even where the leader has no trustee responsibility at all. PSCs do not have to be trustees.

what do I have to do?

Regardless of whether you determine that you have any PSCs there are certain things that you have to do. You must:

- Maintain a register (even if you have nobody to include on it);
- Keep the register up-to-date;
- From 30 June 2016, include the register information in your confirmation statement at Companies House. This is the statement that replaces the annual return.

what does the register look like?

No pro-forma templates for registers are provided and the layout of a register is not stipulated anywhere in the guidance. All that is listed is the information required to be included (see below).

what information do I have to record on the register?

Where you have PSCs, you are required to record the following information for each of them:

- Name
- Date of birth
- Nationality
- Country, state or part of the UK where the person normally lives
- Usual residential address
- The date that a person became a PSC
- Which of the 5 conditions the person meets
- Any restrictions on disclosing the PSC's information



If after taking all reasonable steps, you determine that there are no PSCs, you will need to note this in the register using the following 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.”

The register **must not** be left blank.

timeline

Key dates are as follows:

- The Act applies from 6 April 2016;
- From 1 July 2016 onwards register information must be included in the confirmation statement sent to Companies House;
- Ongoing – the register must be reviewed periodically and kept up-to-date.

what are the consequences of non-compliance?

The Act sets out various steps that the company must undertake in order to comply. In the event that these are not undertaken, or that a register is not properly maintained the company will be in breach with the officers subject to sanctions of fines and imprisonment.

There are also responsibilities attached to the PSC to notify or confirm the company of their interest. Failure to comply may result in loss of rights in the company in which the PSC has an interest.

conclusion

It is worth stressing once again that this Act applies only to companies; churches or charities that are structured as trusts or CIOs will not be impacted. Where it does apply, adherence is mandatory with appropriate sanctions applied for non-compliance.

We are still waiting for the promised ‘fast track’ way of converting a company into a CIO, but until that day arrives all churches and charities structured as companies will need to consider whether they have a person of significant control and, **regardless of the outcome**, **all companies** will need to maintain the PSC register.